

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

DANIEL V. MARINO,
Plaintiff

V.
USHER, *et al.*,
Defendants

No.: 11-cv-06811

BEFORE THE HONORABLE
PAUL S. DIAMOND

PRAECIPE TO ATTACH VERIFICATION AND EXHIBIT TO
PLAINTIFF'S OMNIBUS RESPONSE IN OPPOSITION TO
MOVING DEFENDANTS' MOTIONS FOR COSTS AND FEES

TO THE CLERK OF COURT:

Kindly attach the following to Plaintiff's Omnibus Response in Opposition to Moving Defendants' Motions for Costs and Fees:

- Plaintiff Daniel Marino's Verification
- Deposition of Daniel Marino

Respectfully submitted,
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/d/ August 1, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PRAECIPE TO ATTACH VERIFICATION AND EXHIBIT TO PLAINTIFF'S OMNIBUS RESPONSE IN OPPOSITION TO MOVING DEFENDANTS' MOTIONS FOR COSTS AND FEES has been electronically filed with the Court via the ECF Filing System, served upon all counsel of record via electronic mail, and e-mailed to William Guice and Thomas van Dell.

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VERIFICATION

I verify that the facts in Plaintiff's Omnibus Response in Opposition to Moving Defendants' Motions for Costs and Fees are true, accurate, and correct.

/s/ Daniel V. Marino

DATE: August 1, 2014

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

- - -
DANIEL V. MARINO, :

vs. :

RAYMOND, et al. : No.
11-cv-6811(PSD)

- - -
May 3, 2013
- - -

Videotape deposition of Daniel
V. Marino, taken pursuant to notice,
was held at the Law Offices of Fox
Rothschild, 2000 Market Street,
Philadelphia, Pennsylvania, commencing
at 11:14 a.m., on the above captioned
date, before Kathleen Ruccolo,
Professional Reporter and Notary
Public in and for the Commonwealth of
Pennsylvania.

MAGNA LEGAL SERVICES
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ALSO PRESENT:

Chris Capitanio, Videographer

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I N D E X

Testimony of: Daniel V. Marino

By: Mr. Davis 10, 546

By: Mr. Rogers 513

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<p>1 (By agreement of</p> <p>2 counsel, the sealing, filing</p> <p>3 and certification are waived;</p> <p>4 and all objections, except as</p> <p>5 to the form of the question,</p> <p>6 are reserved until the time of</p> <p>7 trial.)</p> <p>8 - - -</p> <p>9 PROCEEDINGS</p> <p>10 - - -</p> <p>11 VIDEOGRAPHER: We are</p> <p>12 now on the record. This</p> <p>13 begins DVD number one in the</p> <p>14 deposition of Daniel Marino in</p> <p>15 the matter of Marino versus</p> <p>16 Raymond, et al in the United</p> <p>17 States District Court, Eastern</p> <p>18 District of Pennsylvania,</p> <p>19 docket number 11-CV-6811</p> <p>20 (PSD).</p> <p>21 Today is Friday,</p> <p>22 May 3, 2013, and the time is</p> <p>23 11:14 a.m. This deposition is</p> <p>24 being taken at 2000 Market</p>	<p>1 Samuel Harris and Terry Steven</p> <p>2 Lewis.</p> <p>3 MR. ROGERS: Lance</p> <p>4 Rogers, from Rogers & Edile,</p> <p>5 on behalf of defendant IN2N</p> <p>6 Entertainment Group, LLC.</p> <p>7 MR. EIDEL: Michael</p> <p>8 Eidel, Fox Rothschild, for the</p> <p>9 same defendants as Mr. Davis</p> <p>10 and Mr. Williams.</p> <p>11 MR. MALOFIY: Hi, how</p> <p>12 you doing? My name is Francis</p> <p>13 Malofiy. I represent the</p> <p>14 plaintiff in this matter,</p> <p>15 Daniel Marino, who is being</p> <p>16 deposed.</p> <p>17 VIDEOGRAPHER: Will the</p> <p>18 court reporter please swear in</p> <p>19 the witness.</p> <p>20 Daniel Marino, after</p> <p>21 having been duly sworn, was</p> <p>22 examined and testified as</p> <p>23 follows:</p> <p>24 - - -</p>

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<p>1 EXAMINATION</p> <p>2 - - -</p> <p>3 BY MR. DAVIS:</p> <p>4 Q. Would you please state</p> <p>5 your name for the record?</p> <p>6 A. Daniel Marino.</p> <p>7 Q. And what's your</p> <p>8 address, please?</p> <p>9 A. 1520 South Dorin</p> <p>10 Street, Philadelphia, Pennsylvania</p> <p>11 19146.</p> <p>12 Q. Thank you. Mr. Marino,</p> <p>13 you have attended a number of these</p> <p>14 depositions, isn't that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. In this case?</p> <p>17 A. Yes.</p> <p>18 Q. So you are familiar</p> <p>19 with the procedures of how a</p> <p>20 deposition is conducted?</p> <p>21 A. Not as a witness, but I</p> <p>22 have been in many, yes, in this case,</p> <p>23 yes.</p> <p>24 Q. I'm just going to go</p>	<p>1 go further, I'm just going to</p> <p>2 reserve our right to read and</p> <p>3 sign.</p> <p>4 MR. DAVIS: That is</p> <p>5 fine with me. The only other</p> <p>6 stipulation that we have with</p> <p>7 respect to the conduct of the</p> <p>8 deposition would be objections</p> <p>9 as to form only. All other</p> <p>10 objections reserved for the</p> <p>11 time of trial.</p> <p>12 MR. EIDEL: Agreed.</p> <p>13 MR. MALOFIY: That's</p> <p>14 fine.</p> <p>15 BY MR. DAVIS:</p> <p>16 Q. Now, your lawyer may</p> <p>17 take a position with respect to some</p> <p>18 of the questions that I have. You've</p> <p>19 seen this in the previous depositions.</p> <p>20 There may be an objection. He is</p> <p>21 allowed to object to the question. He</p> <p>22 can't give an extended colloquy about</p> <p>23 the question. Once that happens, you</p> <p>24 still have to answer the question,</p>
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<p>1 over a few instructions with respect</p> <p>2 to the deposition so that we can work</p> <p>3 through this as quickly and as</p> <p>4 efficiently as possible. If you don't</p> <p>5 understand any question that I ask,</p> <p>6 please let me know. I'll try to</p> <p>7 rephrase it. If you want to take a</p> <p>8 break, that is fine, but not during</p> <p>9 any question. After you've answered</p> <p>10 your question, if you need to take a</p> <p>11 break and if it is an appropriate</p> <p>12 moment in the questioning, that is</p> <p>13 fine, and you can leave the room at</p> <p>14 that time. When you leave the room,</p> <p>15 you cannot confer with your lawyer.</p> <p>16 Is there any reason</p> <p>17 that your testimony today would not be</p> <p>18 reliable? Are you taking any</p> <p>19 medication, have you consumed any</p> <p>20 alcohol that would affect your ability</p> <p>21 to answer the questions that I ask you</p> <p>22 today?</p> <p>23 A. No.</p> <p>24 MR. MALOFIY: Before we</p>	<p>1 unless it concerns a privileged matter</p> <p>2 between attorney and client, and Mr.</p> <p>3 Malofiy I'm sure will instruct you</p> <p>4 when that occasion arises. Do you</p> <p>5 understand that?</p> <p>6 A. I do.</p> <p>7 MR. DAVIS: All right.</p> <p>8 Okay. Mark as Marino</p> <p>9 Exhibit 1 the second amended</p> <p>10 Notice of Deposition to be</p> <p>11 videotaped, and I'm going to</p> <p>12 hand that to the witness. Let</p> <p>13 me give a copy, of course, to</p> <p>14 plaintiff's counsel.</p> <p>15 - - -</p> <p>16 (At this time a</p> <p>17 document was marked for</p> <p>18 identification as Exhibit No.</p> <p>19 Marino-1.)</p> <p>20 - - -</p> <p>21 MR. MALOFIY: Dan, let</p> <p>22 me see that. Thanks.</p> <p>23 THE WITNESS: This mic</p> <p>24 keeps falling off. I'm trying</p>

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1 here.

2 MR. ROGERS: Just for
3 the record, while you were
4 looking for your document a
5 moment ago Mr. Marino handed
6 something to his attorney that
7 looked like a wallet. For the
8 record, I would like the
9 record to reflect that.

10 THE WITNESS: Yeah, I
11 could clearly state that that
12 was annoying my buttocks
13 sitting down in the seat.

14 MR. ROGERS: Thank you.

15 MR. DAVIS: Handing a
16 copy of the notice to counsel
17 and counsel.

18 BY MR. DAVIS:

19 Q. Mr. Marino, have you
20 seen this document before?

21 A. I don't recall seeing
22 it, because I've seen so many
23 documents, but I am aware of the
24 videotaped deposition, yes.

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1 Q. You are aware that that
2 deposition was going to take place
3 today, May 3rd?

4 A. Yes.

5 Q. Did you understand that
6 that deposition was going to begin at
7 9:30 a.m. in the morning?

8 A. 9:30, no. I was under
9 the impression it was 10:00 a.m.

10 Q. Did your counsel tell
11 you that?

12 A. I'm not sure. I just
13 remember 10:00 a.m.

14 Q. Do you see at the
15 second to last line of the notice, it
16 says May 3rd, beginning at 9:30 a.m.?

17 A. I do see that.

18 MR. DAVIS: And I note
19 for the record that the
20 deposition began approximately
21 ten minutes after 11:00, and
22 I'll also note for the record
23 that we did not hear from Mr.
24 Malofiy until we reached out

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1 to him at approximately, I
2 would say it was 10:25.

3 MR. MALOFIY: I
4 actually sent an e-mail to
5 everybody, I sent an e-mail to
6 all counsel, and I said, we
7 are running late, we will be
8 there about 10:30.

9 MR. DAVIS: We sat here
10 for more than an hour before
11 we heard back from Mr.
12 Malofiy, and when we did hear
13 from him at approximately
14 10:30, he said he was walking
15 from his office, which IS I
16 believe is on 9th Street, to
17 20th Street, not recognizing
18 the urgency of the deposition,
19 and that lawyers were sitting
20 here waiting for the arrival
21 of the witness.

22 MR. MALOFIY: I'm going
23 to respond to that, because
24 you are raising all this

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1 claptrap, and it is getting
2 tired.

3 The issue is I told
4 everyone we are running late.
5 There is reasons for us
6 running late. You can ask my
7 client about that, but to say
8 that I didn't reach out to
9 counsel beforehand was wrong,
10 and I made it very clear that
11 we needed to start this
12 deposition at 10:00
13 originally, not as noticed.

14 MR. EIDEL: Mr.
15 Malofiy, you said you sent an
16 e-mail to all counsel?

17 MR. MALOFIY: Yes.

18 MR. EIDEL: When was
19 that?

20 MR. MALOFIY: That was
21 roughly 9:00 something.

22 MR. EIDEL: 9:00
23 something.

24 MR. MALOFIY: Yes.

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1 MR. EIDEL: Just for
2 the record, I just didn't get
3 it.

4 MR. DAVIS: None of us
5 got it. None of us got it.

6 MR. EIDEL: I didn't
7 receive it, either.

8 MR. DAVIS: And no one
9 had a conversation about
10 starting this deposition at
11 any time other than at 9:30,
12 but let's move on.

13 MR. MALOFIY: I
14 disagree with you. We can
15 move on.

16 MR. DAVIS: * And I'd
17 ask you to send us a copy of
18 that e-mail from whatever time
19 it is you said you sent it so
20 we have a record of it, but
21 none of us received it.

22 BY MR. DAVIS:

23 Q. We'll begin.

24 Mr. Marino. What we are attempting to

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1 do is obtain what information you have
2 with respect to the claims you have
3 asserted against my clients. Do you
4 understand that?

5 A. I do.

6 Q. Okay. I would hope
7 that you'll give me your truthful and
8 best testimony for each question.

9 A. I will.

10 Q. For the last 11 years,
11 Mr. Marino, have you had a cell phone?

12 A. I have, yeah.

13 Q. Okay.

14 A. Well, let me think
15 about that. Most of that time. I'm
16 not quite sure about, like, 11 years
17 ago or 10 years ago, but most of that
18 time.

19 Q. Well, in 2002 did you
20 have a cell phone?

21 A. Yes.

22 Q. In 2003?

23 A. Yeah.

24 Q. And in 2004?

Page 20

1 A. Yes.

2 Q. Can you think of any
3 year since that period that you didn't
4 have a cell phone?

5 A. No.

6 Q. Did you have access to
7 the Internet since 2002?

8 A. Yes.

9 Q. All right. Did you
10 maintain an e-mail address since 2002?

11 A. No. I have had many
12 e-mail addresses.

13 Q. You had no e-mail
14 address?

15 A. I had an e-mail
16 address, yes.

17 Q. My question is, did you
18 have one in 2002?

19 A. Yes.

20 Q. Did you have one in
21 2003?

22 A. Yes.

23 Q. Did you have one in
24 every year thereafter up to the

Page 21

1 present time?

2 A. Yes.

3 Q. Did you have the
4 ability to text from your phone since
5 2002?

6 A. I don't recall. I may
7 have had a pager then.

8 Q. You had a pager?

9 A. I believe.

10 Q. Did you have access to
11 the mail service since 2002?

12 A. Can you define mail
13 service?

14 Q. US Postal Service.

15 A. Yes.

16 Q. And you knew where a
17 Federal Express office was, or a UPS
18 office?

19 A. Sure, I could have
20 found one.

21 Q. Did you have access to
22 transportation since 2002?

23 A. Yes.

24 Q. Bus, car?

Page 22

1 A. Absolutely.
 2 Q. Train, plane?
 3 A. Feet.
 4 Q. You could walk, too?
 5 A. That's right.
 6 Q. I'm going to show you
 7 what we are going to mark as
 8 Plaintiff's Exhibit 2 -- Marino
 9 Exhibit 2.
 10 ---
 11 (At this time a
 12 document was marked for
 13 identification as Exhibit No.
 14 Marino-2.)
 15 ---
 16 BY MR. DAVIS:
 17 Q. This is the complaint
 18 that -- the Second Amended Complaint
 19 that you filed in this action?
 20 A. Okay. Sure. Can I
 21 give this back to somebody?
 22 Q. Do you recognize that
 23 document?
 24 A. Well, obviously I'm not

Page 23

1 going to sit here and go through the
 2 whole thing, but I do believe I do
 3 recognize it, yes.
 4 Q. That is the complaint
 5 you had your lawyer file in, I believe
 6 it was sometime in November of 2011?
 7 A. It appears to be it,
 8 yes.
 9 Q. Is there any more
 10 recent version of that complaint that
 11 you are aware of?
 12 A. Well, I would have to
 13 go through the whole thing to see if
 14 this is the amended one.
 15 Q. Well, it says it --
 16 what does the cover say?
 17 A. It says, amended
 18 complaint.
 19 Q. Do you know of any
 20 other complaint --
 21 A. No.
 22 Q. -- that was prepared or
 23 served since that --
 24 A. No.

Page 24

1 Q. -- pleading? Did you
 2 provide all the facts that are
 3 contained in that document?
 4 A. Yes.
 5 Q. You communicated those
 6 facts to your lawyer?
 7 A. I did.
 8 Q. And when I say, facts,
 9 I mean the allegations that you made.
 10 A. Yes.
 11 Q. Okay.
 12 A. I say facts.
 13 Q. Did anyone assist you
 14 in developing the information that is
 15 contained in that complaint?
 16 MR. MALOFIY:
 17 Objection.
 18 THE WITNESS: No.
 19 BY MR. DAVIS:
 20 Q. No one from your family
 21 or friends or anyone else?
 22 A. In this complaint, no.
 23 Q. It is solely your
 24 information; is that correct?

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1 A. That's right.
 2 Q. Did Mr. Malofiy do any
 3 investigation for you of your claims?
 4 MR. MALOFIY:
 5 Objection, crossing into
 6 work-client privilege here.
 7 MR. DAVIS: I'm asking
 8 the fact.
 9 BY MR. DAVIS:
 10 Q. Did he do any
 11 investigation?
 12 A. What do you mean by
 13 investigation?
 14 Q. Do you know if he
 15 contacted any people on your behalf
 16 with respect to any of the allegations
 17 you made in this complaint?
 18 A. No.
 19 Q. He didn't?
 20 A. I -- no, not that I
 21 know of.
 22 Q. Did you ask him to?
 23 A. No.
 24 Q. So this is solely your

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1 beliefs that are reflected in this
2 document?

3 A. Absolutely.

4 Q. Okay. Did you read the
5 amended complaint before Mr. Malofiy
6 filed it?

7 A. I did.

8 Q. Did you read it word --
9 cover to cover?

10 A. I did.

11 Q. And did you look at
12 every exhibit that is attached to the
13 complaint?

14 A. If this is the same one
15 that you provided me with that we
16 handed in, yes.

17 Q. I assure you that is
18 the same one.

19 A. Okay.

20 Q. Did you read each
21 exhibit cover to cover?

22 A. Yeah.

23 Q. Did you make any
24 corrections to the amended complaint

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1 before it was filed that Mr. Malofiy
2 had drafted for you?

3 A. Can you say that again?

4 Q. Did you make any
5 corrections to the amended complaint
6 before Mr. Malofiy filed it with the
7 court?

8 A. Isn't the amended part
9 the changes?

10 Q. Well, was there only
11 one draft of an amended complaint, or
12 did it have several drafts?

13 MR. MALOFIY: You are
14 crossing the attorney-client
15 privilege here.

16 MR. DAVIS: Are you
17 instructing him not to answer?

18 MR. MALOFIY: No, I'm
19 just telling you what you are
20 doing.

21 BY MR. DAVIS:

22 Q. Were there other drafts
23 of this before it was filed?

24 A. No, this is it.

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1 Q. This is it?

2 A. If this is the same one
3 that you're assuring me of, yes, this
4 is it.

5 Q. So it didn't go through
6 any revision process?

7 MR. MALOFIY:

8 Objection.

9 THE WITNESS: The
10 amended complaint, that, the
11 revised one?

12 BY MR. DAVIS:

13 Q. That's right. So you
14 saw one draft of the amended
15 complaint, you read it, approved it,
16 and Mr. Malofiy filed it for you?

17 A. That's correct.

18 Q. And you authorized
19 Mr. Malofiy to file that document for
20 you?

21 A. I did.

22 Q. Okay. Tell me, do you
23 have an engagement letter with
24 Mr. Malofiy?

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1 A. An engagement letter,
2 what are you defining an engagement
3 letter to be?

4 Q. A contract with Mr.
5 Malofiy in connection with his
6 representation of your interests in
7 this case?

8 MR. MALOFIY:

9 Objection.

10 THE WITNESS: Do I have
11 a letter, I believe I do.
12 Yeah.

13 BY MR. DAVIS:

14 Q. Okay. And what does
15 that letter say?

16 MR. MALOFIY: *

17 Objection, don't answer. Next
18 question.

19 MR. DAVIS: Are you
20 instructing him not to answer?

21 MR. MALOFIY: Yes.

22 MR. DAVIS: You are not
23 going to allow me to know what
24 the terms of your engagement

Page 30

1 are?

2 MR. MALOFIY: Of course
3 I'm not going to allow you to
4 know that. Next question.

5 MR. DAVIS: Mark that
6 as an instruction not to
7 answer.

8 MR. MALOFIY: That's
9 right. Next question.

10 BY MR. DAVIS:

11 Q. Turning back to
12 Exhibit 2, I want you to turn to page
13 -- it is the very last page of the
14 document, and it says, verification.
15 Do you see that?

16 A. Yeah.

17 Q. Are you familiar with
18 that verification?

19 A. Just give me a moment
20 to read it.

21 MR. MALOFIY: This is
22 page 78?

23 MR. DAVIS: It doesn't
24 show a page number on there.

Page 31

1 It is page 28 of 28 of the
2 document.

3 MR. MALOFIY: The last
4 page.

5 THE WITNESS: Can you
6 repeat that question?

7 BY MR. DAVIS:

8 Q. Are you familiar with
9 this verification?

10 A. I am.

11 Q. Is that your signature
12 above the, I guess that would be the
13 typed electronic signature?

14 A. Yup.

15 Q. So in this verification
16 you said that the statements of fact
17 made in the foregoing plaintiff's
18 amended complaint are true and correct
19 upon personal knowledge and to the
20 best of my information and belief; is
21 that correct?

22 A. That is what it says,
23 yeah.

24 Q. Well, you signed this.

Page 32

1 Did you accept that as something that
2 you were prepared to swear to?

3 A. Yes.

4 Q. And you understood that
5 anything you said in here that turned
6 out to be untruthful could subject you
7 to penalties?

8 A. I do.

9 Q. Okay. Mr. Marino, are
10 you presently employed?

11 A. I am.

12 Q. What is your
13 occupation?

14 A. Well, I work for a
15 company out in Haverford,
16 Pennsylvania, technology company. I
17 do many different things for that
18 technology company. I do a lot of
19 multimedia work. I do ads, stuff like
20 that, and I also have a recording
21 studio that I run that belongs to me,
22 and a record label.

23 Q. What is your position
24 at this multimedia firm?

Page 33

1 A. They have me as
2 manager, as a clients' manager, client
3 services manager.

4 Q. What is the name of the
5 company?

6 A. The name of the company
7 is called Prodigio RTS.

8 Q. And what is the address
9 of the company?

10 A. 541 -- 521, I'm sorry.
11 521 West Lancaster Avenue, Haverford,
12 Pennsylvania 19041.

13 Q. And you are an employee
14 there?

15 A. That's correct.

16 Q. You get a W2?

17 A. Yes, sir.

18 Q. Now, you said you have
19 a record label?

20 A. That's correct.

21 Q. What is the name of the
22 record label?

23 A. Fuzztone Records, LLC.

24 Q. Where is that located?

Page 34

1 A. In Springfield,
2 Pennsylvania.
3 Q. And is there an address
4 in Springfield --
5 A. Yes.
6 Q. -- Pennsylvania? What
7 is the address?
8 A. 901 Greenbriar Lane,
9 that is G-R-E-E-N-B-R-I-A-R, Lane,
10 Springfield, Pennsylvania 19064.
11 Q. Is that an office
12 building?
13 A. It is a house.
14 Q. Whose house is it?
15 A. Mine.
16 Q. So you have a recording
17 -- record label, excuse me, at your
18 home?
19 A. Correct.
20 Q. Do you have any
21 employees?
22 A. No.
23 Q. Is it just you?
24 A. I have a partner.

Page 35

1 Q. Who is your partner?
2 A. Brett Haas.
3 Q. Is your record label a
4 corporation?
5 A. It is an LLC.
6 Q. And where was it
7 formed?
8 A. In Pennsylvania.
9 Q. And it is active?
10 A. It is.
11 Q. When was it formed?
12 A. Oh, I'm not sure,
13 roughly 2009, 2010. I'm not exactly
14 sure what date I filed that.
15 Q. Now, are you an
16 employee of Fuzztone Records?
17 A. I am a partner of the
18 record label. It is -- me and my
19 partner own it.
20 Q. No employees?
21 A. No employees.
22 Q. And you said you have a
23 studio?
24 A. Correct.

Page 36

1 Q. Does the studio have a
2 name?
3 A. The studio and the
4 record label are both -- yeah, the
5 same.
6 Q. And it goes under
7 Fuzztone Records, LLC, is that the
8 name of it?
9 A. That's correct.
10 Q. And the studio has no
11 name?
12 A. You know, I never
13 really -- I always thought the two
14 were two and the same, so I had a
15 studio in that building that I use, so
16 I guess you could say it probably
17 doesn't have a name. We always
18 operate under Fuzztone.
19 Q. You said building this
20 time. Is it a house or a building?
21 A. It is a structure.
22 It's a house.
23 Q. And you live in that
24 house?

Page 37

1 A. I do not.
2 Q. Does anyone live in
3 that house?
4 A. Yes.
5 Q. Who lives in this
6 house?
7 A. Brett.
8 Q. It is his home, his
9 regular --
10 A. It is my home. I own
11 it. I have a mortgage. He lives
12 there.
13 Q. Where do you live?
14 A. At the address I stated
15 earlier.
16 Q. Is that in the same
17 town?
18 A. That is in
19 Philadelphia.
20 Q. Philadelphia. Does the
21 studio have any employees?
22 A. No.
23 Q. Okay. How long have
24 you resided at the address in

Page 38

1 Philadelphia?

2 A. Well, when I met my
3 girlfriend, who I recently married, I
4 moved in with her shortly thereafter,
5 and I believe she bought it almost
6 five years ago.

7 Q. And you lived at that
8 address for the past five years?

9 A. Almost.

10 Q. And when I asked you
11 questions about Internet service
12 before, you have Internet service at
13 that location?

14 A. In which location?

15 Q. In Philadelphia.

16 A. Yes.

17 Q. At your residence with
18 your now wife, former girlfriend?

19 A. Yes.

20 Q. Okay. And you have
21 access to mail service there?

22 A. Everyone has access,
23 yes.

24 MR. DAVIS: I'm going

Page 39

1 to mark as Marino Exhibit 3 a
2 single-page document, which I
3 will ask the witness to
4 identify for me.

5 - - -

6 (At this time a
7 document was marked for
8 identification as Exhibit No.
9 Marino-3.)

10 - - -

11 MR. MALOFIY: This is
12 Guice-3 -- excuse me,
13 Marino-3?

14 MR. DAVIS: Yes.

15 MR. MALOFIY: All
16 right. Thanks.

17 BY MR. DAVIS:

18 Q. Can you identify that?

19 A. Yeah.

20 Q. What is it?

21 A. My resume.

22 Q. When was this prepared?

23 A. I really can't say.

24 Give me a moment to look at it. I

Page 40

1 don't recall.

2 Q. Do you think you may
3 have prepared this in the last five
4 years?

5 A. I couldn't say. I
6 don't know.

7 Q. Okay. Under employment
8 it says from 1988 to 1996 you were a
9 busboy/dishwasher at Alberto's
10 Restaurant. Do you see that?

11 A. I do.

12 Q. Were you an employee
13 there?

14 A. Yeah.

15 Q. Okay. In 1997 to 1998
16 it says waiter, Croce's Restaurant.
17 Do you see that?

18 A. I do.

19 Q. Okay. Were you an
20 employee there?

21 A. Yes.

22 Q. Okay. And 1998 through
23 2008 it says you were the general
24 manager of Il Portico Restaurant,

Page 41

1 slash, Tiramisu. Do you see that?

2 A. I do.

3 Q. Is it known by both
4 names?

5 A. No, it's not. I was
6 managing two restaurants.

7 Q. Two restaurants during
8 that time period?

9 A. That's correct.
10 Actually, yeah, two.

11 Q. All right. Were you an
12 employee of Il Portico Restaurant?

13 A. I was.

14 Q. Was that a full-time
15 position?

16 A. Yes.

17 Q. Okay. And Tiramisu,
18 were you an employee there?

19 A. I can't recall which --
20 they are two separate companies, and I
21 don't recall if, within that time
22 frame, I was an employee of both. It
23 bounced back and forth, but I managed
24 both places simultaneously at one

Page 42

1 point, and I worked at each place
2 individually only -- like for a while
3 I worked at just Tiramisu, for a while
4 I worked just at Portico, and for a
5 time I worked at both.

6 Q. Il Portico Restaurant
7 was your employer?

8 A. They both were.

9 Q. Tiramisu was also your
10 employer?

11 A. Correct.

12 Q. Thank you. It says
13 2001 through 2008 you were the CEO of
14 Underworld Entertainment. Do you see
15 that?

16 A. I do.

17 Q. Underworld
18 Entertainment was your employer?

19 A. I was an owner of
20 Underworld Entertainment.

21 Q. Well, Chief Executive
22 Officer is what I think you mean by
23 CEO; am I correct?

24 A. I believe you're

Page 43

1 correct.

2 Q. And you don't
3 understand that Underworld
4 Entertainment was your employer, you
5 thought it was something different
6 than that?

7 MR. MALOFIY: He just
8 said it.

9 THE WITNESS: I just
10 said it.

11 MR. DAVIS: You can
12 state an objection. That is
13 all you can say.

14 MR. MALOFIY: You can't
15 check the guy.

16 BY MR. DAVIS:

17 Q. Did you understand
18 Underworld Entertainment to be your
19 employer?

20 A. I understand that
21 Underworld Entertainment was a company
22 that I had 50-percent ownership in.

23 Q. Okay. And did you
24 receive a salary from Underworld

Page 44

1 Entertainment?

2 A. I did not.

3 Q. Did you receive any
4 compensation from Underworld
5 Entertainment?

6 A. No.

7 Q. No. What were you
8 doing as CEO?

9 A. Of Underworld
10 Entertainment?

11 Q. Yes.

12 A. Let me think about that
13 for a minute. As the CEO of
14 Underworld Entertainment I scouted for
15 talent. I brought them into the
16 studio. I worked with various
17 artists. I went all over different
18 places to find these various artists
19 to bring them in, to work with them,
20 and it was a very, obviously, small
21 company. There was only two of us.
22 So we had many tasks and many duties,
23 everything from creating the actual
24 space from where it was derived from,

Page 45

1 where we housed Underworld
2 Entertainment. We spent a lot of time
3 with a lot of different artists to try
4 to develop them into something
5 successful. So I did many different
6 chores and duties, everything from
7 cleaning to recording to engineering
8 to managing personalities. I can go
9 on and on. I mean, very small
10 business.

11 Q. Did you write music,
12 too, for Underworld?

13 A. I wrote music for
14 myself.

15 Q. Not for Underworld?

16 A. Not -- what did you
17 say?

18 Q. Did you, as one of your
19 tasks as the CEO/owner of Underworld
20 Entertainment, did you write music?

21 A. I would say yes.

22 Q. And did you do some
23 production work as well as part of
24 those tasks?

Page 46

1 A. Yes.
 2 Q. Okay. And did you
 3 consider yourself working for
 4 Underworld Entertainment?
 5 A. You know, I don't know
 6 that I would say I consider myself
 7 working for Underworld Entertainment,
 8 simply because it was something that I
 9 created and owned. It was more of,
 10 like, an identity, you know.
 11 Q. But it was a company?
 12 A. But it was a company.
 13 Q. And you were providing
 14 services to that company?
 15 MR. MALOFIY:
 16 Objection.
 17 BY MR. DAVIS:
 18 Q. Fair statement?
 19 A. No.
 20 Q. No, you were not
 21 providing services to Underworld
 22 Entertainment?
 23 A. I was providing
 24 services that were required to take

Page 47

1 artists in and develop them, but I'm
 2 really not quite sure of your
 3 question.
 4 Q. I'm trying to
 5 understand why you say you were the
 6 owner of Underworld Entertainment, you
 7 were performing various tasks for that
 8 company, but you refuse to say that
 9 you were providing services or working
 10 for the company?
 11 MR. MALOFIY:
 12 Objection. He also didn't
 13 established whether it was a
 14 company. You keep saying
 15 company, company, company, you
 16 haven't asked him, was it a
 17 company?
 18 MR. DAVIS: Mr.
 19 Malofiy, you understand what
 20 the rules are with respect to
 21 objections. You heard it from
 22 the judge directly, and I'd
 23 ask you to please heed those
 24 instructions.

Page 48

1 THE WITNESS: Can you
 2 repeat that?
 3 BY MR. DAVIS:
 4 Q. You were performing
 5 tasks for Underworld Entertainment?
 6 A. Yes.
 7 Q. Which you described.
 8 A. Right.
 9 MR. MALOFIY:
 10 Objection, go ahead.
 11 BY MR. DAVIS:
 12 Q. Were those tasks for
 13 the purpose of Underworld
 14 Entertainment or for yourself
 15 individually?
 16 A. Both.
 17 Q. Both. Okay.
 18 A. Both. Well, because
 19 you have to understand it was a
 20 building, it was a studio, and I did
 21 things for myself as well.
 22 Q. You're familiar with a
 23 company called Destro Music
 24 Productions, Inc.?

Page 49

1 A. I am.
 2 Q. And what was your
 3 relationship to Destro Music
 4 Productions, Inc.?
 5 A. I was a part owner of
 6 that.
 7 Q. Is that a corporation?
 8 A. I believe so.
 9 Q. And was Underworld
 10 Entertainment connected in any way
 11 with Destro Music Productions, Inc.?
 12 A. You know, I don't
 13 recall, because I didn't really take
 14 care of the business aspect of the --
 15 of Underworld and Destro.
 16 Q. As an owner, you didn't
 17 understand the relationships between
 18 Underworld Entertainment and Destro
 19 Music Productions, Inc.?
 20 A. I understand to a
 21 degree, but I was not the individual
 22 taking care of the business affairs.
 23 Q. Share with me what you
 24 understood the relationship between

Page 50

1 Underworld Entertainment and Destro
2 Music Productions to be.

3 A. Just give me a moment
4 to answer that. From what I recall,
5 the Underworld Entertainment is the
6 record label and the Destro Music
7 Productions is the production company.

8 Q. Destro was a
9 corporation, and was Underworld
10 Entertainment connected with that
11 corporation?

12 MR. MALOFIY:

13 Objection. When you use
14 Destro, you have to be clear,
15 because your questions are
16 unclear, and -- no, you can't
17 say Destro. You have to
18 define what Destro. There are
19 three different things defined
20 as Destro.

21 MR. DAVIS: To be
22 clear, you object all you
23 want. If we need to, we'll
24 play it for the judge and show

Page 51

1 him how you are interfering
2 with the deposition.

3 MR. MALOFIY: Don't
4 play tricks, Mr. Davis. No
5 claptrap.

6 BY MR. DAVIS:

7 Q. The question is, did
8 you understand Destro Music
9 Productions, Inc. to include
10 Underworld Entertainment?

11 A. I don't recall.

12 Q. And you were an owner
13 of Destro Productions, Inc.?

14 A. That's correct.

15 Q. And you just don't
16 know?

17 A. I wasn't the individual
18 that really maintained all the
19 business affairs.

20 Q. Did you ever get issued
21 shares of stock from Destro Music
22 Productions, Inc.?

23 A. Shares?

24 Q. Stock certificates?

Page 52

1 A. No.

2 Q. How did you know that
3 you actually had an ownership interest
4 in Destro Music Productions, Inc.?

5 A. Because it was
6 discussed with my partner.

7 Q. Who is your partner?

8 A. Was my partner, Dante
9 Barton was my partner.

10 Q. How much of Destro
11 Music Productions, Inc., did you
12 understand that you owned?

13 A. Fifty percent.

14 Q. Who owned the other 50
15 percent?

16 A. Dante Barton.

17 Q. Are you familiar with a
18 company called Wavelab Recording
19 Studio?

20 MR. MALOFIY:

21 Objection, company. You have
22 to be very specific here. You
23 are playing games. If it's a
24 company, it's a company. If

Page 53

1 it's an LLC, it's an LLC. If
2 it's an Inc., it's an Inc.
3 Don't play games and call it
4 something it is not.

5 MR. DAVIS: You are
6 coaching the witness.

7 MR. MALOFIY: You can't
8 play tricks.

9 MR. DAVIS: Mr. Malofiy

10 --
11 MR. MALOFIY: You can't
12 do it.

13 MR. DAVIS: -- you are
14 coaching the witness.

15 MR. MALOFIY: No, it is
16 not.

17 THE WITNESS: I do, I
18 do know what Wavelab Recording
19 Studios is.

20 BY MR. DAVIS:

21 Q. What is it?

22 A. It's a recording
23 studio.

24 Q. Of what?

Page 54

1 A. Of the -- so -- I don't
2 understand what you mean, of what.

3 Q. Well, are you saying it
4 has no connection to any of the other
5 two companies?

6 MR. MALOFIY:
7 Objection.

8 THE WITNESS: It was
9 the place where we recorded
10 the productions for Destro
11 Music and for the artists that
12 were part of Underworld
13 Entertainment.

14 BY MR. DAVIS:

15 Q. Was there any business
16 relationship between Destro Music
17 Productions, Inc. and Wavelab
18 Recording Studio?

19 A. I would say yes.

20 Q. And what was that
21 relationship?

22 A. I believe I just said
23 it.

24 Q. Were you an owner of

Page 55

1 Wavelab Recording Studio?

2 A. Absolutely, yes.

3 Q. Explain to me what you
4 owned.

5 A. I owned majority of the
6 equipment that was inside of the
7 recording studio. I was on the lease
8 for the space that we rented. I paid
9 for -- you know, I had the telephone
10 there. You know, I mean I paid for
11 telephone services, Internet services,
12 gas, electric, I mean.

13 Q. Did you consider
14 Wavelab Recording Studio a division of
15 Destro Music Productions, Inc.?

16 A. I never really thought
17 about it like that, like, considered
18 it to be a division of. It was just
19 where I recorded, where I worked
20 daily.

21 Q. Do you understand what
22 the word proprietorship means?

23 A. I believe so, but I
24 would like you to define it so we

Page 56

1 are --

2 Q. Was this a business
3 that you ran using that name without
4 any corporate or other legal form?

5 A. Again, I don't recall,
6 because I wasn't the individual taking
7 care of the business affairs.

8 Q. So do you know whether
9 or not Wavelab Recording Studio was a
10 corporation?

11 A. I don't recall.

12 Q. Do you know if it was
13 an LLC?

14 A. I can't say. I don't
15 remember.

16 Q. Was it a partnership?

17 A. Mr. Davis, I just don't
18 remember. I can't say.

19 Q. Don't know. Okay.
20 With respect to Underworld
21 Entertainment, I think you already
22 said you don't know whether it was a
23 corporation. Did you know if it was
24 an LLC?

Page 57

1 A. I don't. I remember
2 that we went to the bank and we opened
3 a bank account under Underworld, but I
4 don't remember. Maybe a check may
5 reflect that. You have one as an
6 exhibit.

7 Q. It was your
8 understanding that of these three
9 companies, you owned 50 percent of
10 each?

11 A. That's correct.

12 Q. And Mr. Barton was the
13 other 50-percent owner?

14 A. Yeah.

15 Q. Who was taking care of
16 the business affairs of the three
17 businesses; Underworld Entertainment,
18 Destro Music Productions, Inc., and
19 Wavelab Recording Studio?

20 A. Dante Barton.

21 Q. You had no role in
22 that?

23 A. Very, very little, if
24 any. I was more the person that

Page 58

1 handled the music. I was more of the
2 music person, Dante was more the
3 businessperson. That was our
4 understanding.

5 Q. Are you still a 50/50
6 owner of each of these businesses?

7 A. Am I still an owner of
8 these businesses? Well, the studio is
9 no longer there, so I really can't
10 say. I don't know how I would be an
11 owner of something that is no longer
12 there.

13 Q. What about Destro Music
14 Productions, Inc.?

15 A. I haven't been working
16 underneath that business for quite
17 some time now, so I really don't know.

18 Q. Do you know if the
19 company was dissolved?

20 A. Again, I'm not the
21 person handling those affairs, nor did
22 I have the paperwork, per se, for
23 those companies in my possession, so I
24 don't know what happened --

Page 59

1 Q. Do you know what
2 happened --

3 A. -- to those companies.

4 Q. Are you still a
5 50-percent owner of Underworld
6 Entertainment?

7 A. I really don't know at
8 this time, just simply because I
9 haven't operated underneath that
10 company for a while. If you read the
11 complaint, you will know our
12 relationship dissolved. And he was
13 the person handling those affairs so I
14 never consider thinking about it.

15 Q. You left it to Mr.
16 Barton to handle business affairs of
17 Underworld Entertainment, Destro Music
18 Productions, Inc., and Wavelab
19 Recording Studio?

20 MR. MALOFIY:

21 Objection. You can answer.

22 THE WITNESS: Can you
23 repeat the question?

24 BY MR. DAVIS:

Page 60

1 Q. You left it to Mr.
2 Barton to handle the business affairs
3 of Underworld Entertainment, Destro
4 Music Productions, Inc., and Wavelab
5 Recording Studio?

6 A. That's correct.

7 Q. Until what time were
8 you active in any one of those
9 businesses? When I say time, I mean
10 what year.

11 A. Yeah, I'm trying to
12 think. Somewhere around 2009, 2000 --
13 whenever, you know, my partner left me
14 high and dry. Shortly thereafter I
15 had to go in and get the equipment,
16 sell it, pay for rent, so I would
17 assume around that time.

18 Q. Did you take any steps
19 to disassociate yourself with any of
20 these companies through a lawyer?

21 A. No.

22 Q. Does the 2009 date
23 apply for each of Underworld
24 Entertainment, Destro Music

Page 61

1 Productions, Inc., and Wavelab
2 Recording Studio?

3 A. In regards to?

4 Q. When you thought it was
5 the end of your relationship, your
6 connection with those companies.

7 A. You know, I associate
8 those companies with my partner --
9 ex-partner, Dante Barton. So when our
10 partnership terminated, when he
11 disappeared and I found out all this
12 information, I would say around that
13 time.

14 Q. 2009?

15 A. Yeah.

16 Q. Okay. What title, if
17 any, did you have with Destro Music
18 Productions, Inc.?

19 A. Title?

20 Q. Title.

21 A. Title in regards to the
22 company?

23 Q. Yes. You said you were
24 the chief executive officer of

Page 62

1 Underworld Entertainment?

2 A. Right.

3 Q. What was your position
4 at Destro Music Productions, Inc.?

5 A. I would just say that I
6 was a partner, 50-percent partner in
7 the business.

8 Q. Okay. Were there any
9 other persons involved in Destro Music
10 Productions, Inc., besides yourself
11 and Mr. Barton?

12 A. No.

13 Q. You were the only
14 employees of the company?

15 MR. MALOFIY:

16 Objection. Now you are
17 getting tricky again there.

18 Can't do that. Can't do that.

19 MR. DAVIS:

20 Mr. Malofiy, I warn you once
21 more. You are making
22 objections that are not
23 permitted by the order of the
24 court.

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1 MR. MALOFIY: You
2 are --

3 MR. DAVIS: You
4 are making speaking
5 objections.

6 MR. MALOFIY: You are
7 telling him what he said, and
8 it's wrong. That is not what
9 he said.

10 MR. DAVIS: Repeat the
11 question, please, so the
12 witness can answer. You can
13 object to the question, Mr.
14 Malofiy --

15 MR. MALOFIY: Don't be
16 tricky, ask straight
17 questions, get a straight
18 answer. Isn't that what you
19 want, the truth, or do you
20 want something else? Do you
21 want lies? Do you want to ask
22 him a lied question and then
23 you want him to answer a lied
24 question?

Page 64

1 MR. DAVIS: Madam
2 reporter, would you repeat the
3 question?
4 - - -

5 (At this time the court
6 reporter read back from the
7 record as was requested.)
8 - - -

9 THE WITNESS: You know,
10 you said employees, I find
11 myself saying I'm a partner of
12 the company. I don't know if
13 that constitutes as an
14 employee. I'm not an
15 attorney. I'm not sure how
16 legally they break down, so I
17 can tell you that I was a
18 50-percent partner in the
19 company. I don't know,
20 employee. I don't know how --
21 I don't know how it breaks
22 down. I don't know.

23 BY MR. DAVIS:

24 Q. Well, you understood

Page 65

1 yourself to be the chief executive
2 officer of Underworld Entertainment,
3 that you know; is that correct?

4 A. Yeah.

5 Q. Is it your testimony
6 you don't know what your position was
7 at Destro Music Productions, Inc.,
8 other than to say you were a partner?
9

10 MR. MALOFIY:

11 Objection.

12 THE WITNESS: I mean, I
13 did a lot of the same duties
14 for Underworld that I did for
15 Destro Music. I never
16 considered having a title. It
17 really didn't matter amongst
18 us and what we did, so I
19 really don't know how to
20 answer the question.

21 BY MR. DAVIS:

22 Q. Were there any
23 employees of Destro Music Productions,
24 Inc.?

MR. MALOFIY:

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1 Objection, asked and answered.

2 THE WITNESS: No.

3 There was just myself and
4 Dante were the partners who
5 worked together daily. So how
6 you guys define breaking down
7 the business, and how you want
8 a response from me, I just
9 don't know how to answer it.
10 I was there every day working
11 day in and day out for years
12 writing songs, producing
13 artists. So you say, were you
14 an employee, I never got a
15 check from Destro Music so.

16 BY MR. DAVIS:

17 Q. So you were writing and
18 producing songs for Destro Music
19 Productions, Inc.?

20 A. I was writing and
21 producing music for myself, for
22 Underworld and for Destro, for various
23 people that came in.

24 Q. Were you ever paid any

Page 67

1 compensation by Destro --

2 MR. MALOFIY:

3 Objection.

4 BY MR. DAVIS:

5 Q. -- Music Productions,
6 Inc.?

7 A. Not that I recall.

8 Q. Do you know if Destro
9 Music Productions, Inc., had a bank
10 account?

11 A. I believe so.

12 Q. Where was the banking
13 conducted for Destro Music
14 Productions, Inc.?

15 A. It would have been one
16 of two banks. It would have been
17 either Citizens Bank or at the time
18 First Union.

19 Q. Did you have check
20 signing power?

21 A. I did.

22 Q. Okay. What about
23 Underworld, did Underworld maintain
24 any checking accounts?

Page 68

1 A. Yes.

2 Q. Did you have check
3 signing power at that account?

4 A. I did.

5 Q. If I -- do you recall
6 the name of the bank?

7 A. For Underworld?

8 Q. Yes.

9 A. First Union.

10 Q. First Union?

11 A. I believe if we look --
12 if we look at the exhibit, I believe
13 there is a check in this exhibit.

14 Q. Which exhibit are you
15 looking at, the complaint?

16 A. I don't know. I am not
17 certain, but I know that there is a --
18 that I have given you guys everything
19 that I have, and I'm pretty certain
20 that there is Underworld checks with
21 my name on it. And I'm not sure if it
22 is in the complaint, but if it is not
23 in the complaint, I'm sure we can
24 arrange it, for you to have it.

Page 69

1 Q. Did you have a title at
2 Wavelab Recording Studio?

3 MR. MALOFIY:

4 Objection.

5 THE WITNESS: Again,
6 the title is like -- I'm just
7 being honest with you, I never
8 really considered too much I
9 had a title, especially in a
10 recording studio I owned.

11 BY MR. DAVIS:

12 Q. But you had a title at
13 Underworld Entertainment?

14 A. I had a title because
15 Dante and I discussed titles, and he
16 said, we are both CEOs, so I didn't
17 really think too much of it, and what
18 it meant and how much clout that meant
19 I had. It had a nice ring to it, so.

20 Q. Is that why you put it
21 on your resume?

22 A. That's correct.

23 Q. But you didn't think it
24 really meant anything?

Page 70

1 MR. MALOFIY:

2 Objection.

3 THE WITNESS: I really

4 didn't know -- I always

5 thought it just meant an

6 owner, being at the top of the

7 food chain, since I spent so

8 much money and time and effort

9 and energy in creating this

10 entity.

11 BY MR. DAVIS:

12 Q. Were you paid any

13 compensation by Wavelab Studio

14 Recording?

15 MR. MALOFIY:

16 Objection.

17 THE WITNESS: No, I'm

18 sorry, I'm shaking my head. I

19 don't see the check in here

20 that we were discussing. Do

21 you recall seeing it?

22 BY MR. DAVIS:

23 Q. We are going to search

24 and see if we see a check.

Page 71

1 A. I believe -- I don't
2 know -- I'm not allowed to talk to
3 him, but if you want to ask him I
4 believe he may know the answer.

5 Q. I'm not going to ask
6 him any questions.

7 Do you know if Wavelab
8 Studio Recording maintained any bank
9 accounts?

10 A. I don't remember. I
11 don't remember if we had banking
12 accounts at that time.

13 Q. Did Underworld
14 Entertainment, Destro Music
15 Productions, Inc., and Wavelab Studio
16 Recording maintain separate locations?

17 A. I believe -- I believe
18 yes. In regards to, I believe the
19 Destro and Underworld were in Yeadon,
20 I believe. I'm not 100 percent
21 certain.

22 Q. Is there any reason --

23 MR. MALOFIY:

24 Objection. I apologize. I

Page 72

1 was distracted. Can you read
2 back that question?

3 ---

4 (At this time the court
5 reporter read back from the
6 record as was requested.)

7 ---

8 THE WITNESS: So let me
9 ask you the question here,
10 when you say, different
11 locations, do you mean
12 physically where we worked out
13 of?

14 BY MR. DAVIS:

15 Q. Yes.

16 A. No.

17 Q. What was the address of
18 the location that each of these
19 businesses operated from?

20 A. 1 Old Bridge Road,
21 Philadelphia, Pennsylvania 19029.

22 Q. You produced a lease as
23 part of your production documents, do
24 you recall that?

Page 73

1 A. Absolutely.

2 Q. Do you recall whether
3 the lease was in the name of any one
4 of those businesses?

5 A. I don't.

6 MR. DAVIS: I'm going
7 to mark as Marino-4 a document
8 entitled, Commercial Lease.

9 ---

10 (At this time a
11 document was marked for
12 identification as Exhibit No.
13 Marino-4.)

14 ---

15 MR. MALOFIY: Thank
16 you, Mr. Davis.

17 BY MR. DAVIS:

18 Q. I ask you to look at
19 that document, please.

20 A. Sure.

21 Q. Do you recognize it?

22 A. Yes.

23 Q. Who is the lease
24 between? I refer you to the first

Page 74

1 paragraph of the lease.

2 A. I just want to see what
3 the rest of this is.

4 Q. This is a document that
5 was Bates stamped by your counsel and
6 produced to us.

7 A. It was between -- you
8 are saying the first paragraph, I see
9 signatures on the back of it.

10 Q. Okay. Look there, too.

11 A. Massoud Mantinfar,
12 Dante Edward Barton and myself, Daniel
13 V. Marino.

14 Q. Is there any reason why
15 this lease is between the lessor, who
16 is this Massoud Mantinfar, and
17 yourself and Mr. Barton --

18 A. Yeah.

19 Q. -- rather than the
20 companies?

21 A. Oh, you mean why him
22 and not companies and why him and me
23 and Barton?

24 Q. What I'm asking you is,

Page 76

1 A. I do.

2 Q. Are you saying to me
3 that you believe this lease was before
4 he had formed Destro Music
5 Productions, Inc.?

6 A. No. I don't believe
7 that.

8 Q. Destro Music
9 Productions, Inc., was already formed?

10 A. As far as I know.

11 Q. Was there any reason
12 why Destro Music Productions, Inc.,
13 didn't enter into this lease?

14 A. I couldn't answer that.
15 I mean, we were the partners paying
16 for the lease, so I thought it all
17 made sense, the individuals that are
18 paying for it.

19 Q. The occupants of the
20 space that was being leased was for
21 Destro Music Productions, Inc.,
22 Underworld Entertainment and Wavelab
23 Studio Recording?

24 A. We did operate out of

Page 75

1 why isn't this lease in the name of
2 Underworld Entertainment or Destro
3 Music Productions, Inc., or Wavelab
4 Studio Recordings?

5 MR. MALOFIY:

6 Objection. The document
7 speaks for itself. You can
8 answer the question.

9 THE WITNESS: I believe
10 it's because we had started
11 the names of the company,
12 Wavelab, Underworld
13 Entertainment and Destro,
14 shortly after or right around
15 this time.

16 BY MR. DAVIS:

17 Q. Well, don't you recall
18 in your complaint that you allege that
19 Mr. Barton had already formed Destro
20 Music Productions, Inc., and he
21 suggested that you use that entity so
22 that you wouldn't have to expend money
23 to form a new corporation, do you
24 recall that?

Page 77

1 this building.

2 Q. Well, did you live in
3 that building?

4 A. I did not.

5 Q. Did Mr. Barton live in
6 that building?

7 A. He did not. We spent
8 enough time there to say we almost
9 lived there, though.

10 Q. Okay. I don't have a
11 copy of this, but we can mark this --

12 A. Can I ask you a
13 question, Mr. Davis?

14 Q. I ask the questions.
15 If you want to ask me a question about
16 procedure, that is fine but --

17 A. It is sort of
18 procedure. I just want to know, the
19 gentleman to your right, who is he?

20 Q. This is Derek Williams
21 from my office.

22 MR. MALOFIY: Perhaps I
23 should have introduced you. I
24 didn't realize that you didn't

Page 78

1 --

2 THE WITNESS: He was
3 the only person that I really
4 didn't understand who he was.

5 MR. MALOFIY: I don't
6 think you met.

7 THE WITNESS: We met.

8 MR. DAVIS: I'll show
9 your counsel.

10 THE WITNESS: Oh, yeah,
11 there is the check.

12 MR. DAVIS: This will
13 be marked as Marino-6, a
14 one-page document that bears a
15 check.

16 - - -

17 (At this time a
18 document was marked for
19 identification as Exhibit No.
20 Marino-5.)

21 - - -

22 BY MR. DAVIS:

23 Q. I'll show you what has
24 been marked as Marino Exhibit 6. Can

Page 79

1 you identify that?

2 MR. MALOFIY: Can I
3 just see it?

4 MR. DAVIS: We gave you
5 one.

6 MR. MALOFIY: You did.
7 I'm sorry. This is Marino
8 what?

9 MR. DAVIS: Five, I'm
10 sorry. Marino-5.

11 THE WITNESS: Thank
12 you.

13 BY MR. DAVIS:

14 Q. Do you recognize that
15 check?

16 A. I do.

17 Q. Can you tell me what it
18 says in the left-hand corner at the
19 top?

20 A. It says Daniel V.
21 Marino, Dante E. Barton, 1 Old Bridge
22 Road, Philadelphia, PA 19129.

23 Q. And is that the bank
24 account that you were testifying about

Page 80

1 previously?

2 A. No.

3 Q. What account is this,
4 if you know?

5 A. This is a joint account
6 that we had.

7 Q. What was the purpose of
8 this account?

9 A. I don't recall. The
10 purpose of this account?

11 Q. Yes.

12 A. I don't recall. I mean
13 -- yeah, I don't recall.

14 Q. Well, on the reference
15 line it says rent. Do you see that?

16 A. Yeah.

17 Q. Does that refresh your
18 recollection of what this account
19 would have been for?

20 MR. MALOFIY: Memo
21 line.

22 BY MR. DAVIS:

23 Q. Memo line?

24 A. No, we had a lot of

Page 81

1 things going on. I just -- again, I
2 didn't really take track of, you know,
3 what Dante was doing business-wise. I
4 trusted him with everything.

5 Q. You have no idea?

6 MR. MALOFIY:

7 Objection.

8 THE WITNESS: I have an
9 idea that I had a bank account
10 with him, absolutely. What
11 was the purpose of the bank
12 account, I don't recall.

13 BY MR. DAVIS:

14 Q. You didn't bother
15 yourself with the business details of
16 any of the businesses that you
17 co-owned with Mr. Barton?

18 MR. MALOFIY:

19 Objection. Can you restate
20 that question? I missed it.
21 The sirens were going.

22 MR. DAVIS: Madam
23 reporter, would you please
24 reread the question.

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1 ---
2 (At this time the court
3 reporter read back from the
4 record as was requested.)
5 ---

6 MR. MALOFIY:

7 Objection. You can answer it.

8 THE WITNESS: Can you
9 explain to me what you mean by
10 bother?

11 BY MR. DAVIS:

12 Q. Did you participate in
13 any of the business matters that Mr.
14 Barton was handling on behalf of any
15 of the businesses you were running
16 with him?

17 MR. MALOFIY:

18 Objection. You can answer.

19 THE WITNESS: Very
20 little.

21 BY MR. DAVIS:

22 Q. And why is that?

23 A. Again, I was more in
24 control of the creative aspect of the

Page 83

1 company. He was more in the business
2 aspect of the company.

3 Q. You trusted him?

4 A. Absolutely.

5 Q. Prior to 2009, your
6 complaint contains many allegation
7 about your feelings toward Mr. Barton.
8 Do you recall some of those feelings
9 that you expressed in the complaint?

10 A. When you say prior to
11 2009, do you mean prior to the
12 fall-out we had?

13 Q. Yes.

14 A. I did.

15 Q. Okay. You considered
16 him a close friend and partner?

17 A. I did.

18 Q. And you trusted and
19 admired him?

20 A. I did.

21 Q. It was someone you
22 enjoyed a sincere friendship with?

23 A. He was like my brother.

24 Q. He was someone you

Page 84

1 respected?

2 A. Absolutely.

3 Q. Okay. You thought of
4 him as a brother?

5 A. I considered him a
6 brother.

7 Q. When was the last time
8 you spoke with Mr. Barton?

9 A. I couldn't tell you
10 exactly, but sometime, I would say
11 2009, 2008. I'm not quite sure. I
12 couldn't tell you exactly the last
13 time I spoke to him.

14 Q. It wasn't recently?

15 A. I haven't talked to
16 him, no.

17 Q. Have you communicated
18 with him by e-mail, letter, text or
19 otherwise in writing?

20 A. No.

21 Q. Okay. Now, you say you
22 were like brothers, very close. Did
23 you know something about Mr. Barton's
24 family?

Page 85

1 A. I knew his kids,
2 ex-wife, his sister. I met his mom a
3 couple times.

4 Q. Are you still in touch
5 with any of them?

6 A. No.

7 Q. When did you cease
8 having contact with any of his family
9 members or --

10 A. Prior to us breaking
11 up. It is not like I hung out with
12 his family all the time. I couldn't
13 tell you when the last time I saw one
14 of them. I probably saw maybe his
15 ex-wife and daughter close to the time
16 that we parted ways.

17 Q. So in 2009 you knew
18 where they were?

19 A. I can't say '09 or '08,
20 around that time.

21 Q. When you say you knew
22 where they were, you knew where they
23 lived in 2009, his ex-wife and his
24 children?

Page 86

1 A. I knew the apartment
2 building they lived in, very large
3 apartment building. I couldn't say,
4 you know, which one.

5 Q. But you knew the
6 address?

7 A. No, I didn't know the
8 number of the address.

9 Q. You could find the
10 building if you had to?

11 A. Yeah, sure.

12 Q. Okay. Did you know Mr.
13 Barton's in-laws?

14 MR. MALOFIY:

15 Objection.

16 BY MR. DAVIS:

17 Q. The father and mother
18 of his wife or ex-wife, whatever the
19 case may be?

20 A. You know, no, I never
21 met them.

22 Q. You never met them?

23 A. No.

24 Q. You are sure about

Page 87

1 that?

2 A. Yeah.

3 Q. Do you know where Mr.
4 Barton's ex-wife is today?

5 A. No.

6 Q. Well, did you ever
7 learn that they had moved from this
8 apartment building that you know where
9 to find?

10 A. Ex-wife?

11 Q. Yes.

12 A. No.

13 Q. You were never told
14 that they had moved?

15 A. I have no idea. It is
16 not like I kept communication with
17 them. The only time I ever saw them
18 was with him.

19 Q. Did you know any of Mr.
20 Barton's friends?

21 A. Yes.

22 Q. Do you stay in touch
23 with any of his friends today?

24 A. No.

Page 88

1 Q. You know a man named
2 Wil Guice, don't you?

3 A. Yes.

4 Q. You saw him yesterday
5 at his deposition?

6 A. I did.

7 Q. Prior to yesterday,
8 when was the last time you saw Mr.
9 Guice?

10 A. I couldn't tell you,
11 years and years ago.

12 Q. Do you know when Mr.
13 Guice arrived in Philadelphia for his
14 deposition yesterday?

15 A. I found out during the
16 deposition, so yes.

17 Q. You didn't meet him the
18 day before?

19 A. No.

20 Q. You didn't call him the
21 night before?

22 A. I have not had any
23 communications with Wil Guice since
24 the last time I saw him.

Page 89

1 Q. Did you participate in
2 arranging for Mr. Guice to come to
3 Philadelphia?

4 A. No.

5 Q. That was done by your
6 lawyer?

7 A. I would assume so.

8 Q. You don't know?

9 A. I don't know. I don't
10 know. Unless you did it. Somebody in
11 this party must have, right?

12 Q. And you are aware of
13 the statement that he submitted in
14 this case back in February of 2012?

15 A. Which statement are you
16 referring to?

17 Q. The written statement
18 that he reviewed with your lawyer
19 yesterday during the deposition.

20 A. Can you ask that
21 question again?

22 Q. You are familiar with
23 that statement?

24 A. I am familiar with the

Page 90

1 statement.

2 MR. MALOFIY: What I
3 have termed as an affidavit,
4 the title is affidavit. You
5 have an issue with that, but
6 nonetheless.

7 MR. DAVIS: Marino-6.

8 - - -

9 (At this time a
10 document was marked for
11 identification as Exhibit No.
12 Marino-6.)

13 - - -

14 BY MR. DAVIS:

15 Q. I show you a copy of
16 Mr. Guice's statement, marked as
17 Marino-6. You have seen that before,
18 haven't you?

19 A. Yeah, I have.

20 Q. Did you speak with Mr.
21 Guice prior to receiving that
22 statement?

23 A. No.

24 Q. You didn't discuss with

Page 91

1 him any of the details of what was
2 contained in this statement?

3 A. No. I thought I was
4 fairly clear in the last answer that I
5 haven't had any communications with
6 him in any way, shape or form in many
7 years.

8 Q. Did you have someone
9 speak to him for you?

10 A. No.

11 Q. Other than your lawyer?

12 MR. MALOFIY:

13 Objection.

14 THE WITNESS: I didn't
15 have my lawyer speak with him.
16 He called him.

17 BY MR. DAVIS:

18 Q. Did you promise Mr.
19 Guice anything for giving that
20 statement?

21 MR. MALOFIY:

22 Objection.

23 THE WITNESS: I just
24 told you I haven't spoken to

Page 92

1 him. How could I make
2 promises?

3 MR. MALOFIY: Playing
4 games.

5 BY MR. DAVIS:

6 Q. Did you promise it
7 through a third party?

8 A. No.

9 MR. MALOFIY: Asked and
10 answered, objection. You can
11 answer.

12 BY MR. DAVIS:

13 Q. Did you ever tell Mr.
14 Guice that you wouldn't pursue him for
15 money damages if he gave you a
16 statement?

17 A. No.

18 Q. You heard yesterday,
19 when Mr. Guice testified that he
20 didn't realize that he was being
21 pursued for money damages in this
22 case, do you remember that?

23 A. What is that?

24 MR. MALOFIY:

Page 93

1 Objection.

2 BY MR. DAVIS:

3 Q. You heard Mr. Guice
4 testify yesterday that he was unaware
5 that you were suing him for money
6 damages?

7 A. No, I did not.

8 Q. You didn't hear that
9 yesterday?

10 A. I heard him say clearly
11 that he was a defendant in the case in
12 the beginning of the testimony.

13 Q. You didn't witness the
14 testimony in which we went through the
15 causes of action that apply to him,
16 and he responded in each case that he
17 was unaware that he was being sued for
18 those claims?

19 A. I think --

20 MR. MALOFIY: Is this
21 -- objection, to be clear --

22 THE WITNESS: Can I
23 answer that?

24 MR. DAVIS:

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1 Mr. Malofiy, please stop
2 interrupting the examination.

3 THE WITNESS: I think
4 what happened was you really
5 confused him, and you really
6 got him excited and he didn't
7 know how to handle it.

8 BY MR. DAVIS:

9 Q. Is that what you think?

10 A. That is what I think.

11 Q. Okay. Do you know Wil
12 Guice to be a liar?

13 A. No.

14 Q. So if the testimony
15 actually portrayed him demonstrating
16 cluelessness about you suing him for
17 money damage, would you believe that
18 he is not telling the truth?

19 MR. MALOFIY:

20 Objection. This is just
21 getting so far afield.

22 THE WITNESS: I don't
23 really know.

24 MR. MALOFIY: Don't

Page 96

1 collect money from Mr. Guice if you
2 get a judgment against him?

3 A. I'm not sure what a
4 judgment is.

5 Q. A ruling or an order or
6 a declaration by the court that you
7 are entitled to collect money from Mr.
8 Guice. Will you enforce that against
9 Mr. Guice?

10 MR. MALOFIY:

11 Objection. This is a legal
12 question. It is far afield.

13 MR. DAVIS: No, it is
14 not.

15 MR. MALOFIY: Yeah, it
16 is. Yeah, it is. Ask him
17 about judgments.

18 MR. DAVIS: Mr.

19 Malofiy, the record is going
20 to show what you are doing
21 during the course of this
22 deposition.

23 MR. MALOFIY: Don't ask
24 a legal question.

Page 95

1 speculate.

2 THE WITNESS: Okay.

3 BY MR. DAVIS:

4 Q. Well, do you know Mr.
5 Guice to be a liar?

6 A. No.

7 Q. You believe him to be a
8 truthful person?

9 A. Very.

10 Q. If you -- you've
11 entered a default against him through
12 your counsel in this case, are you
13 aware of that?

14 A. I am.

15 Q. And if you get a
16 default judgment against him, meaning
17 a judgment is entered against him for
18 a dollar amount, do you intend to
19 enforce it against him?

20 MR. MALOFIY:

21 Objection. These are legal
22 questions.

23 BY MR. DAVIS:

24 Q. Do you intend to

Page 97

1 BY MR. DAVIS:

2 Q. If you get a judgment
3 against Mr. Guice, do you intend to
4 enforce it against him?

5 A. I'm not quite sure of
6 the question.

7 Q. Well, you are seeking a
8 judgment against my clients, aren't
9 you? You want money from my clients,
10 don't you?

11 A. I want to be properly
12 credited as a songwriter, as a
13 producer, as an engineer, and I would
14 like to be compensated.

15 Q. You want money?

16 A. Yes.

17 Q. Among other things?

18 A. Yes.

19 Q. And you made similar
20 claims against Mr. Guice, you know
21 that, right?

22 A. Yes.

23 Q. So the same things you
24 want against my clients you want

Page 98

1 against Mr. Guice, too?
 2 A. I believe everyone in
 3 the complaint, yes, and every company.
 4 Q. So if you get a
 5 judgment against Mr. Guice for the
 6 same things that you're seeking
 7 against my clients, do you intend to
 8 enforce it against Mr. Guice?
 9 A. I would say at this
 10 time, yes.
 11 Q. Yes. You said you want
 12 to be properly credited. What do you
 13 want to be properly credited for?
 14 A. I just said it.
 15 Q. What?
 16 A. Songwriting.
 17 Q. Of what?
 18 A. The song Club Girl, Bad
 19 Girl, and the underlying composition.
 20 Q. Now, if you get a
 21 judgment against Mr. Barton, who you
 22 also sued for this -- many of the same
 23 claims that you sued my clients, do
 24 you intend to enforce that judgment

Page 99

1 against Mr. Barton?
 2 MR. MALOFIY:
 3 Objection. Asking legal
 4 questions. You can answer.
 5 THE WITNESS: As I
 6 stated, as far as I know,
 7 everyone in the complaint and
 8 every company.
 9 BY MR. DAVIS:
 10 Q. So you have made no
 11 arrangements with either Mr. Guice or
 12 Mr. Barton that you will not pursue
 13 them to collect any money that you
 14 might be awarded in this case?
 15 A. I haven't had any
 16 communications myself in any way,
 17 shape or form or through any third
 18 party with either of those
 19 individuals.
 20 Q. So you just mentioned
 21 the composition Club Girl, are you
 22 familiar with that title?
 23 A. Club Girl?
 24 Q. Yes.

Page 100

1 A. Yes, I am.
 2 Q. And were you involved
 3 in any aspect of Club Girl?
 4 A. Every aspect.
 5 Q. Okay. Who else was
 6 involved in Club Girl?
 7 A. There was only three of
 8 us involved in Club Girl. I believe
 9 you have that in front of you; myself,
 10 William Guice and Dante Barton.
 11 Q. What did you write?
 12 A. I wrote the music and
 13 the lyrics and the melody.
 14 Q. You wrote the whole
 15 song yourself?
 16 A. No.
 17 Q. So did you write all of
 18 the music yourself?
 19 A. Yes.
 20 Q. Did you write all of
 21 the lyrics yourself?
 22 A. No.
 23 Q. Did you write all of
 24 the melody yourself?

Page 101

1 A. No.
 2 Q. Who wrote the lyrics
 3 besides yourself?
 4 A. Wil Guice.
 5 Q. And who wrote the
 6 melody besides yourself?
 7 A. Wil Guice.
 8 Q. The parts that you
 9 claim that you created, when did you
 10 create them?
 11 MR. MALOFIY:
 12 Objection. You can answer.
 13 THE WITNESS: When you
 14 say, when, like day?
 15 BY MR. DAVIS:
 16 Q. Can you give me a
 17 month, a year?
 18 A. I wrote that song right
 19 after I purchased my guitar, and I
 20 have the receipt for that guitar, and
 21 I believe it is around 2001.
 22 MR. MALOFIY: Say it
 23 again.
 24 THE WITNESS: 2001.

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1 BY MR. DAVIS:
 2 Q. In 2001 you created the
 3 music, some of the lyrics and some of
 4 the melody?
 5 A. That's correct.
 6 Q. Do you know what month
 7 in 2001?
 8 A. No. I'm sorry. No.
 9 Q. Now, you mentioned that
 10 Dante Barton was also a writer of Club
 11 Girl; is that correct?
 12 A. Yeah.
 13 Q. What did Dante Barton
 14 write?
 15 A. Dante Barton wrote the
 16 drum parts around my recording of the
 17 guitar.
 18 Q. Now, you don't consider
 19 the drum parts part of the music?
 20 MR. MALOFIY:
 21 Objection.
 22 THE WITNESS: I do.
 23 BY MR. DAVIS:
 24 Q. You do. So then he

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1 also participated in creating music
 2 besides yourself?
 3 A. Yes, but I was the
 4 original person who created the song,
 5 and he added to it. So he helped
 6 write it, yes.
 7 Q. So he helped write the
 8 music with you?
 9 A. Yes.
 10 Q. Do you know when Mr.
 11 Barton created that drum beat?
 12 A. Within two to
 13 three days after I did my part.
 14 Q. Again --
 15 A. After I created my
 16 part.
 17 Q. So that would be
 18 sometime in 2001?
 19 A. Yeah.
 20 Q. Okay. Now, you
 21 testified that Mr. Guice wrote lyrics,
 22 as well as yourself, for Club Girl; is
 23 that correct?
 24 A. Yes.

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1 Q. When did Mr. Guice
 2 write his lyrics?
 3 A. The same time -- the
 4 same day. We collaborated in the
 5 studio shortly after Dante put his
 6 drum parts in.
 7 Q. So again, it's in 2001?
 8 A. Yeah.
 9 Q. All right. Did you,
 10 Mr. Barton, Mr. Guice, agree to merge
 11 all of these different contributions
 12 into a single work?
 13 MR. MALOFIY:
 14 Objection. You can answer.
 15 THE WITNESS: Can you
 16 rephrase that?
 17 BY MR. DAVIS:
 18 Q. Did you, Mr. Barton,
 19 and Mr. Guice agree to combine the
 20 respective parts of the song that you
 21 were each creating into a single work?
 22 MR. MALOFIY:
 23 Objection.
 24 THE WITNESS: I would

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1 say yes, it just evolved that
 2 way. That is how we worked,
 3 always.
 4 BY MR. DAVIS:
 5 Q. You each had
 6 contributions?
 7 A. Yeah, to a song.
 8 Q. You put them together,
 9 and you created the song?
 10 A. That's a correct.
 11 Q. Okay. And you intended
 12 to do that?
 13 MR. MALOFIY:
 14 Objection.
 15 THE WITNESS: Yeah. I
 16 intended to do that with the
 17 -- you know, knowing that we
 18 all shared a certain
 19 percentage of the song. That
 20 was our agreement.
 21 BY MR. DAVIS:
 22 Q. I'm not quibbling with
 23 that, I am just asking you, you
 24 intended to create this song together?

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1 MR. MALOFIY:
 2 Objection. You can answer.
 3 THE WITNESS: Yes.
 4 Yes.
 5 BY MR. DAVIS:
 6 Q. Was Club Girl ever
 7 mixed?
 8 MR. MALOFIY:
 9 Objection.
 10 THE WITNESS: Define
 11 mixed.
 12 BY MR. DAVIS:
 13 Q. Well, you know that you
 14 are in the recording business, and you
 15 are a producer -- you are not familiar
 16 with the term mixing a record?
 17 A. I've dealt with so many
 18 people over the years and everyone's
 19 version of what they define as mix is
 20 a little skewed from what maybe I may
 21 think, so that is why I'm asking, can
 22 you please clarify when you say mix.
 23 Q. I'll ask you to define
 24 for me what you understand mixing a

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1 record to be.
 2 A. I define mixing a
 3 record to get all of the components,
 4 guitars, every different instrument,
 5 every different sound, every different
 6 vocal track, and find their -- the
 7 right space sonically so that you can
 8 hear everything clearly from the
 9 direction of the producer.
 10 Q. Did you do that with
 11 Club Girl?
 12 A. I did.
 13 Q. Okay. And after you --
 14 did anyone help you mix the record?
 15 A. Dante.
 16 Q. Did Wil Guice?
 17 A. No.
 18 Q. After you and Mr.
 19 Barton mixed Club Girl, did you master
 20 it, master the record?
 21 A. No.
 22 Q. Did you do anything
 23 after you mixed it?
 24 MR. MALOFIY:

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1 Objection.
 2 BY MR. DAVIS:
 3 Q. With Club Girl?
 4 A. What do you mean,
 5 anything?
 6 Q. Any other kind of
 7 musical application or production
 8 application to the product that
 9 existed after you mixed it?
 10 MR. MALOFIY: Just --
 11 THE WITNESS: Yes.
 12 BY MR. DAVIS:
 13 Q. What did you do?
 14 A. We went after some of
 15 the defendants took hold of the music,
 16 we went back and did some revisions.
 17 Q. You are getting ahead
 18 of me, but --
 19 A. That did happen.
 20 Q. I understand --
 21 MR. MALOFIY: Don't cut
 22 him off.
 23 THE WITNESS: But
 24 normally what we did was we

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1 wrote songs. Our intention
 2 was to write songs, or try to
 3 write hit songs, and we would
 4 archive them and hand them
 5 over to Tommy Van Dell and
 6 other people.
 7 BY MR. DAVIS:
 8 Q. That wasn't my
 9 question. I didn't ask that question,
 10 but thank you for the information.
 11 A. Sure.
 12 Q. In your mind, was Club
 13 Girl a finished work?
 14 A. In my mind?
 15 Q. Yes, after you mixed
 16 it, aside from the mastering of it?
 17 A. It is so hard to say.
 18 It is just a hard thing, as an artist,
 19 as a musician, as a producer, it is
 20 really hard to put that final stamp on
 21 a song.
 22 Q. You considered it a
 23 musical work at that point?
 24 A. It was definitely a

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1 musical work at that point.

2 MR. MALOFIY:

3 Gentlemen, I'm going to need
4 to take a bathroom brake. Is
5 this a good stopping point.

6 MR. DAVIS: Why don't
7 we take a break.

8 VIDEOGRAPHER: The time
9 is 12:30 p.m. We are going
10 off the record.

11 - - -

12 (At this time a short
13 break was taken.)

14 - - -

15 VIDEOGRAPHER: The time
16 is now 12:46 p.m. We are back
17 on the record.

18 BY MR. DAVIS:

19 Q. Okay. We are just back
20 from a break. I'm going to show you
21 Document 75 from the court docket.

22 MR. DAVIS: Mr.
23 Malofi, I don't have an extra
24 copy of it.

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1 MR. MALOFIY: Can I see
2 it?

3 MR. DAVIS: This is the
4 order from Judge Diamond in
5 this case. Did you have an
6 opportunity to look at it?

7 MR. MALOFIY: You are
8 asking me?

9 MR. DAVIS: I'm going
10 to give you an opportunity to
11 look at it.

12 MR. MALOFIY: Thank
13 you. This is the one that
14 just came through, right?

15 MR. DAVIS: Yes.

16 MR. MALOFIY: Like,
17 last week.

18 BY MR. DAVIS:

19 Q. Mr. Marino, I'm going
20 to show you what --

21 MR. MALOFIY: Is that
22 marked as Marino --

23 MR. DAVIS: I'm not
24 going to mark it.

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1 MR. MALOFIY: Seven.

2 Okay.

3 MR. DAVIS: I'm just
4 going to show it to him.

5 BY MR. DAVIS:

6 Q. Document 75, this is an
7 order from Judge Diamond in this case.
8 Have you seen that order before?

9 A. I'm not sure if I saw
10 it or not.

11 Q. Are you aware that
12 Judge Diamond ruled that any damages
13 that you may be entitled to in
14 connection with your claims against my
15 clients are barred from the period
16 from before October 28, 2008?

17 A. Can you say that again?

18 Q. Are you aware that
19 Judge Diamond ruled in this case that
20 you cannot seek any damages against my
21 clients for copyright infringement for
22 the period before October 28, 2008?

23 A. No.

24 Q. You are not aware of

Page 113

1 that?

2 A. I was told, but I'm not
3 quite sure what it all means.

4 MR. MALOFIY: You can't
5 talk about our communications.

6 BY MR. DAVIS:

7 Q. This opinion says that
8 any claim that you have for copyright
9 damages, whether it be damages or
10 profits or statutory damages that
11 arose prior to October 28, 2008 cannot
12 be pursued by you, that they are
13 dismissed from the case?

14 MR. MALOFIY: Let's be
15 clear, with the right to
16 amend.

17 BY MR. DAVIS:

18 Q. Do you understand that?

19 MR. MALOFIY: Let's be
20 clear, with the right to
21 amend.

22 THE WITNESS: You said
23 an opinion? Did you say
24 opinion at the beginning of

Page 114

1 that?
 2 BY MR. DAVIS:
 3 Q. No, I didn't.
 4 A. Okay. I hear what you
 5 are saying.
 6 Q. I said, do you
 7 understand that?
 8 A. Yeah. Sure.
 9 Q. Is this the first time
 10 that you were aware of that?
 11 A. No.
 12 Q. You knew that
 13 previously?
 14 A. I did, but I don't
 15 really understand it all, so I've
 16 heard it, but I don't quite -- I'm not
 17 an attorney so I don't quite --
 18 MR. MALOFIY: You can't
 19 talk about our communications.
 20 BY MR. DAVIS:
 21 Q. As part of your prior
 22 answer, when we were talking about --
 23 when you were testifying about Club
 24 Girl, and I asked you, did you do

Page 115

1 anything after the work was mixed, you
 2 began to tell me about other work that
 3 was done to Club Girl at some later
 4 point. Do you recall that?
 5 A. I do.
 6 Q. All right. And would
 7 you describe for me this other work
 8 that you allege was done to Club Girl?
 9 A. Sure. What I would
 10 like to make clear, and I don't think
 11 you understand is that the song Club
 12 Girl I wrote originally on my own, I
 13 recorded on my own, and now you are
 14 defending those clients that stole
 15 that song from me.
 16 Q. You are making a
 17 statement that is not responsive to my
 18 question.
 19 MR. MALOFIY: I believe
 20 it is.
 21 BY MR. DAVIS:
 22 Q. My question to you was,
 23 you had testified earlier about other
 24 contributions that were made --

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1 MR. MALOFIY:
 2 Objection.
 3 BY MR. DAVIS:
 4 Q. -- to the Club Girl --
 5 MR. MALOFIY: That is
 6 not what was stated.
 7 BY MR. DAVIS:
 8 Q. -- work. Do you recall
 9 testifying about that?
 10 A. I do. I do.
 11 MR. MALOFIY:
 12 Objection.
 13 BY MR. DAVIS:
 14 Q. Okay. What other work
 15 was done to Club Girl?
 16 MR. MALOFIY:
 17 Objection. You can answer.
 18 THE WITNESS: The other
 19 work that was done to Club
 20 Girl was when I tried to work
 21 on it with Jimmy Jam or Terry
 22 Lewis, one of those guys, and
 23 Mark Pitts, with Dante Barton.
 24 BY MR. DAVIS:

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1 Q. What did you do?
 2 A. They asked us to try to
 3 rewrite the hook.
 4 Q. Did you do that?
 5 A. We did.
 6 Q. Did you agree to do
 7 that?
 8 A. Did I agree to do that?
 9 Q. To do it?
 10 A. I did it.
 11 Q. You were not forced to
 12 do it, were you?
 13 A. Was I forced to do it?
 14 Q. Yes.
 15 A. No.
 16 Q. And did you want to
 17 give this new material to Mr. -- Jimmy
 18 Jams and Mr. Pitts?
 19 A. I didn't want to have
 20 it stolen from me, but I -- absolutely
 21 I wanted to make it a part of
 22 something bigger.
 23 Q. You wanted the new
 24 elements that you claim that you

Page 118

1 created made part of Club Girl?
 2 MR. MALOFIY:
 3 Objection. You can answer.
 4 THE WITNESS: I don't
 5 understand what you are
 6 saying.
 7 BY MR. DAVIS:
 8 Q. You are describing that
 9 you did additional work for the song
 10 Club Girl.
 11 A. Uh-huh.
 12 Q. Did you intend for
 13 those additional parts that you worked
 14 on to be part of Club Girl?
 15 MR. MALOFIY:
 16 Objection. You can answer.
 17 BY MR. DAVIS:
 18 Q. To be included in Club
 19 Girl?
 20 A. If I wrote additional
 21 parts to the song that I originally
 22 wrote, yes, I would want them to be on
 23 there.
 24 Q. And the material that

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1 you say you created, you --
 2 A. That I did create. I'm
 3 the only person that created that
 4 song.
 5 Q. You in some way got
 6 that new material to Jimmy Jams?
 7 A. Yes.
 8 Q. And did he include that
 9 additional material in Club Girl?
 10 A. It was for a short
 11 while, yes.
 12 Q. Was it taken out?
 13 A. I don't know what
 14 happened to it. I guess it was taken
 15 out. I can't say what happened to it.
 16 Q. Well, when you gave it
 17 to Mr. -- Jimmy Jams --
 18 A. I don't know what they
 19 did with it.
 20 Q. You didn't have any
 21 objection to them including it, if
 22 they wanted to?
 23 MR. MALOFIY:
 24 Objection.

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1 BY MR. DAVIS:
 2 Q. Is that true?
 3 MR. MALOFIY: You can
 4 answer.
 5 THE WITNESS: Well, it
 6 was to be talked about
 7 afterwards, sure. I mean,
 8 they were going to give their
 9 opinion and see what I felt
 10 about it.
 11 BY MR. DAVIS:
 12 Q. See what you felt about
 13 it?
 14 A. That's right. You got
 15 to understand, that's my song
 16 originally.
 17 Q. Did you not want to
 18 include this additional material that
 19 you created as part of this song?
 20 A. It is hard to say. I
 21 mean, you write songs, and sometimes
 22 you just listen to it for a few days
 23 and feel it out.
 24 Q. Tell me, Mr. Marino,

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1 did you ever have any written
 2 agreement with Mr. Barton and Mr.
 3 Guice concerning Club Girl?
 4 A. Look, I come from a
 5 family -- my parents come from Italy,
 6 they came here in the boat from Italy.
 7 They taught us how to be honest, and a
 8 lot of times you say your word, that
 9 was your word, and my relationship
 10 with Dante was all a handshake,
 11 verbally.
 12 Q. So you didn't have a
 13 written agreement with Mr. Barton or
 14 Mr. Guice with respect to Club Girl?
 15 A. No.
 16 Q. The record will be
 17 better if I finish my question before
 18 you answer.
 19 A. Okay.
 20 Q. So you didn't have a
 21 written agreement with Mr. Guice or
 22 Mr. Barton for Club Girl; is that
 23 correct?
 24 A. No agreement.

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1 Q. Did you have --
 2 MR. MALOFIY:
 3 Objection.
 4 BY MR. DAVIS:
 5 Q. -- any written
 6 agreements between yourself and Dante
 7 Barton?
 8 A. We may have, yeah.
 9 Q. Well, could you tell me
 10 which ones you had?
 11 A. Production agreements.
 12 Q. Between you and Mr.
 13 Barton, between you?
 14 A. Yeah, between us.
 15 Q. Production agreements
 16 for what?
 17 A. For songs that we
 18 worked on.
 19 Q. It is an agreement that
 20 you made with him with respect to a
 21 particular song?
 22 A. Artist.
 23 Q. Oh, an artist. So was
 24 it agreement with you and Mr. Barton

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1 on one side of the contract, and the
 2 artist on the other side of the
 3 contract?
 4 MR. MALOFIY:
 5 Objection.
 6 BY MR. DAVIS:
 7 Q. Is that what you mean?
 8 A. Yeah, we were
 9 production contracts between an
 10 artist.
 11 Q. Yeah. What I'm asking
 12 you is, did you have an agreement
 13 between you and Mr. Barton?
 14 A. Yes.
 15 Q. That was in writing?
 16 A. Not in writing, no, but
 17 we did have an agreement.
 18 Q. Oral agreements?
 19 A. Verbal, on a handshake.
 20 Q. Okay. Did you have any
 21 written agreements between yourself
 22 and Mr. Guice?
 23 A. Just verbal agreements.
 24 Q. Okay. Did you have any

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1 written agreements between -- I should
 2 say among you, Mr. Barton and Mr.
 3 Guice?
 4 A. The only agreements we
 5 had --
 6 MR. MALOFIY: Can you
 7 repeat that question? I'm
 8 sorry. I was writing.
 9 ---
 10 (At this time the court
 11 reporter read back from the
 12 record as was requested.)
 13 ---
 14 THE WITNESS: We had
 15 agreements.
 16 BY MR. DAVIS:
 17 Q. I'm asking you, did you
 18 have any written agreements?
 19 A. No written agreements.
 20 Q. Thank you. How long
 21 have you been writing songs?
 22 A. Wow, a long time.
 23 Since I was a kid.
 24 Q. How old are you today?

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1 A. Thirty-six. I'll be
 2 thirty-seven next week.
 3 Q. Approximately when did
 4 you begin writing songs?
 5 A. Teenager.
 6 Q. At some point in your
 7 writing career, did you know that
 8 songs needed to be copyrighted, or
 9 could be copyrighted?
 10 A. You know, again, I'm
 11 not an attorney, especially at that
 12 age. Now, going through this entire
 13 case, I'm a little more knowledgeable
 14 on everything, but at that time, no, I
 15 wasn't sure.
 16 Q. When did you become
 17 aware of copyrighting the works that
 18 you --
 19 A. I mean, I've always
 20 heard of copyrights, but again, I'm
 21 not an attorney. I just don't know.
 22 Q. To this day, do you
 23 have an understanding what it means to
 24 copyright --

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1 A. I believe I have a
2 better understanding.

3 Q. Please let me finish.

4 - - -

5 (At this time the court
6 reporter read back from the
7 record as was requested.)

8 - - -

9 BY MR. DAVIS:

10 Q. Do you have an
11 understanding what it means to
12 copyright a musical work today?

13 A. I believe I do.

14 Q. What is your
15 understanding?

16 A. I believe that your
17 song is automatically copy written
18 upon recording it for the first time.

19 Q. When did you have an
20 understanding of filing any paperwork
21 with the copyright office?

22 A. I didn't know it was
23 necessary.

24 Q. Do you know it to be

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1 necessary today?

2 A. I think it helps.

3 Q. When did you get this
4 understanding that it could help to
5 copyright a wrong in the copyright
6 office?

7 A. In the past several
8 years.

9 Q. Could you fix it with
10 any greater certainty than the past
11 several years?

12 A. No.

13 Q. Did you know that back
14 in 2001?

15 A. No.

16 Q. What about 2002?

17 A. No.

18 Q. 2003?

19 A. No.

20 Q. 2004?

21 A. No.

22 Q. 2005?

23 A. No.

24 Q. 2006?

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1 A. No.

2 Q. What about in 2007?

3 A. No.

4 Q. 2008?

5 A. No.

6 Q. Did you register Club
7 Girl with the US Copyright Office at
8 any time?

9 A. No.

10 Q. Did you ever think to
11 do so?

12 A. I didn't think I needed
13 to.

14 Q. Did you have any
15 understanding that someone was doing
16 that for you?

17 MR. MALOFIY:

18 Objection. You can't talk
19 about our communications.

20 BY MR. DAVIS:

21 Q. Besides anything your
22 lawyer may have told you.

23 A. I believe that Tommy
24 Van Dell was handling that for us.

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1 Q. So you understood that
2 Tommy Van Dell was doing something to
3 copyright Club Girl?

4 A. I heard about it and I
5 heard copyrights, and again, I wasn't
6 on the business side, so I would
7 assume he was taking care it.

8 Q. Tell me how you heard
9 that from Tommy Van Dell.

10 A. I didn't hear it from
11 Tommy Van Dell. I said I assumed that
12 he was doing this.

13 Q. Why did you assume it?

14 A. Because Dante was
15 taking care of everything.

16 Q. And you had an
17 understanding that he was going to
18 file some kind of document to register
19 the copyright?

20 A. Again, I really am not
21 sure.

22 Q. Well, tell me what your
23 understanding of what you thought he
24 was going to be doing was.

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1 A. Who?
 2 Q. Van Dell.
 3 A. Placing our music and
 4 making sure that, you know, all the
 5 legalities were taken care of.
 6 Q. Did Mr. Van Dell tell
 7 you that, or did Mr. Barton tell you
 8 that?
 9 MR. MALOFIY:
 10 Objection. Are you asking --
 11 MR. DAVIS: Stop it.
 12 MR. MALOFIY: --
 13 specific conversation or
 14 something else?
 15 THE WITNESS: Can you
 16 repeat that question?
 17 BY MR. DAVIS:
 18 Q. Did Mr. Van Dell tell
 19 you that or did Mr. Barton tell you
 20 that?
 21 A. Tell me what?
 22 Q. That the legalities, as
 23 you phrased it, were being handled by
 24 Mr. Van Dell?

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1 MR. MALOFIY: For what?
 2 Objection.
 3 BY MR. DAVIS:
 4 Q. For Club Girl.
 5 MR. MALOFIY:
 6 Objection. Be clear.
 7 THE WITNESS: Like I
 8 said, Dante always took care
 9 of all the business aspects.
 10 Van Dell was around from time
 11 to time, but it was
 12 communicated to me through
 13 Dante that Tommy was taking
 14 care of it.
 15 BY MR. DAVIS:
 16 Q. That he was going to
 17 protect --
 18 A. Just take care of us as
 19 a publisher.
 20 Q. Okay. Did you ever
 21 check with Mr. Van Dell whether or not
 22 he was doing what you thought he was
 23 doing --
 24 A. I didn't check.

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1 Q. You have to let me
 2 finish the question. I know you have
 3 got prepared responses.
 4 MR. MALOFIY:
 5 Objection.
 6 BY MR. DAVIS:
 7 Q. I have to at least ask
 8 the question.
 9 MR. MALOFIY: The truth
 10 is the truth.
 11 BY MR. DAVIS:
 12 Q. Did you ever check with
 13 Mr. Van Dell to see --
 14 MR. MALOFIY: Spare me
 15 the --
 16 BY MR. DAVIS:
 17 Q. -- if he was handling
 18 Club Girl?
 19 A. I was led to believe
 20 that he was taking care of it.
 21 Q. Who led you to believe
 22 that?
 23 A. He did.
 24 Q. Did he?

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1 A. Yes.
 2 Q. In specific
 3 conversations you had with him?
 4 A. Just coming through the
 5 studio, being a great, jolly guy,
 6 coming in, sitting, hanging out with
 7 me, listening to my songs, what do you
 8 have next, let's hear the next, Dan,
 9 what have you got, let's hear the
 10 song, we can use this for so-and-so.
 11 I mean, it happened. I mean, he was
 12 like my buddy, at least I thought he
 13 was.
 14 Q. So he regularly came to
 15 the studio?
 16 A. I would say maybe five
 17 times a year.
 18 Q. And through these
 19 appearances in the studio you thought
 20 he was taking care of business for
 21 you?
 22 A. Absolutely.
 23 Q. Did he ever
 24 specifically tell you that he had

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1 taken care of registering Club Girl on
2 your behalf?

3 A. I don't recall who told
4 me, but within our camp it was either
5 him or Dante.

6 Q. So you had some
7 understanding that a registration of
8 Club Girl had taken place?

9 A. Yeah. Yeah. But I
10 didn't know, really, what that meant.

11 Q. But you thought it had
12 been registered?

13 A. I thought that I
14 recorded the song on my own and it was
15 my song, and I was dealing with people
16 that I trusted, but they stole it.

17 Q. Did you ever ask to see
18 what they had done, if there was any
19 way that you could look at a piece of
20 paper to see whether or not they had
21 done what you understood them to have
22 done?

23 A. If I didn't understand
24 it, why would I ask to see it?

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1 Q. So the answer is no,
2 you never asked?

3 A. I can't say no or yes
4 to that. I don't even understand what
5 that question is.

6 Q. Well, I'll take that as
7 a no, that you didn't ask.

8 A. What is your question?

9 Q. You never asked whether
10 or not Mr. Van Dell ever registered
11 Club Girl?

12 MR. MALOFIY:

13 Objection. You can answer.

14 THE WITNESS: Can you
15 rephrase that?

16 BY MR. DAVIS:

17 Q. Did you ever ask Mr.
18 Van Dell if he registered Club Girl to
19 protect your rights?

20 A. I don't recall.

21 Q. Did you ever ask
22 Mr. Van Dell if he had registered any
23 work that you may have delivered to
24 him during the period you knew him?

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1 A. I don't know why I
2 would have to ask him to register, if
3 he did or if he didn't, my work that I
4 recorded on my own that was mine.

5 Q. Did you register your
6 own work?

7 A. All I know is when I
8 record it, when I wrote it, it is my
9 wrong.

10 Q. Did you ever have an
11 opportunity to look at any copyright
12 registration with respect to Club
13 Girl?

14 A. Mr. Davis, I think I
15 said it several times. The song that
16 I recorded that I wrote on my own,
17 that I produced and engineered on my
18 own is my song. I didn't feel that I
19 really had to go check on my close
20 friends for anything until after I
21 realized it was stolen from me.

22 Q. Let me understand that.
23 Based on your statement, are you
24 forgetting about your testimony that

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1 you said Mr. Guice and Mr. Barton
2 contributed to that song, Club Girl?

3 A. After I wrote it, after
4 I recorded it on my own, they added to
5 it.

6 Q. All right. Did you
7 share that song with them?

8 A. I let them listen to
9 it. I played it for them.

10 Q. When the song was --
11 all of these pieces that were put
12 together to create Club Girl, when it
13 was complete, did you have a
14 discussion of how you would own this
15 work together?

16 MR. MALOFIY:

17 Objection. You can answer.

18 THE WITNESS: We've had
19 that discussion prior to Club
20 Girl.

21 BY MR. DAVIS:

22 Q. Okay.

23 A. It is our understanding
24 we work as a team. The song writing

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1 is split three ways; myself, Dante and
2 Wil. The production Wil had nothing
3 to do with. So it was myself and
4 Dante that split the production 50/50.

5 Q. Are you saying that the
6 three of you, with respect to the
7 composition, co-owned it equally?

8 MR. MALOFIY:

9 Objection. You can answer.

10 THE WITNESS: I owned
11 it on myself. I created it by
12 myself, the underlying
13 composition.

14 BY MR. DAVIS:

15 Q. So is it your position
16 that they don't have any ownership
17 interest in Club Girl?

18 A. They do.

19 Q. What his their
20 interest?

21 A. Songwriting.

22 Q. What does that mean to
23 you?

24 A. They helped write the

Page 139

1 song.

2 Q. And what does that mean
3 in terms of their participation in
4 Club Girl?

5 A. I don't understand your
6 question.

7 Q. If you earned a dollar
8 from the exploitation of Club Girl,
9 would they be entitled to any part of
10 that dollar?

11 MR. MALOFIY:

12 Objection. It is a legal
13 question.

14 THE WITNESS: Again, I
15 was just going to say, I'm not
16 really quite sure how it all
17 breaks down, how it works, but
18 yes, they did get some
19 contribution to the song.

20 BY MR. DAVIS:

21 Q. You said you made a
22 deal with them. I just want to
23 understand what the deal was.

24 A. I just told you.

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1 Q. Explain it to me again.

2 MR. MALOFIY: He said
3 it five times. Five times.

4 BY MR. DAVIS:

5 Q. Just answer the
6 question.

7 A. We are a trio.

8 MR. MALOFIY: You are
9 unbelievable. He said it
10 three to five times. The
11 record will reflect that.

12 Your memory may be failing.

13 THE WITNESS: We split
14 the song writing three ways,
15 between the three of us. Do I
16 need to describe who the three
17 are?

18 BY MR. DAVIS:

19 Q. You don't have to
20 describe who they are, but explain to
21 me what you mean when you split it
22 three ways. What does that mean?

23 A. One-third each. The
24 songwriting credit, the songwriting,

Page 141

1 whatever that brings in.

2 Q. When you say, what it
3 brings in, what do you mean by that?

4 A. Compensation.

5 Q. Compensation -- take my
6 example, a dollar comes in. Would you
7 each get?

8 A. \$0.33 on the
9 songwriting.

10 Q. Songwriting. Okay. On
11 the production side, how would that be
12 split, if at all?

13 A. \$0.50 between myself
14 and Dante.

15 Q. Thank you. Was it the
16 original plan to have Wil Guice
17 exploit Club Girl as the singer?

18 MR. MALOFIY:

19 Objection. You can answer.

20 THE WITNESS: I'm not
21 sure what that question is.

22 BY MR. DAVIS:

23 Q. Was it the initial plan
24 for Wil Guice to be the person who

Page 142

1 performed the song Club Girl?

2 MR. MALOFIY:

3 Objection. You can answer, to
4 the best of your ability.

5 THE WITNESS: Was it
6 the original plan to have Wil
7 Guice exploit Club Girl?

8 BY MR. DAVIS:

9 Q. Yes.

10 A. My original plan, I
11 didn't have an original, original
12 plan. I just wrote the song and
13 recorded it on my own, and then I
14 worked together with them and we added
15 more to it, and we initially wanted
16 Wil Guice to have that as a single.
17 So I'm not sure if that answers your
18 question.

19 Q. Look at paragraph 303
20 of your complaint and tell me if that
21 refreshes your recollection about what
22 the original plan was for Club Girl.
23 303.

24 A. 303. 303?

Page 143

1 Q. Three hundred and
2 three.

3 A. I don't --

4 MR. MALOFIY:

5 Paragraph.

6 THE WITNESS: Oh,
7 paragraph. Thank you.

8 BY MR. DAVIS:

9 Q. Do you want me to turn
10 it for you?

11 A. No, I can find it.
12 Thank you. 303 you said, right?

13 Q. Yes.

14 A. Okay. I read 303.

15 Q. Was it the original
16 plan to have Wil Guice perform Club
17 Girl as a breakout hit?

18 MR. MALOFIY:

19 Objection. Now you are
20 mischaracterizing what he said
21 before.

22 THE WITNESS: I'm not
23 quite sure what you mean from
24 your question.

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1 BY MR. DAVIS:

2 Q. I'll read it for you
3 then. Originally, Marino and Barton
4 were trying to brake Guice as an
5 artist, and had planned the song Club
6 Girl to be Guice's breakout hit.

7 What does that mean to
8 you?

9 A. Like I stated earlier,
10 that we wanted to use it for him as a
11 single.

12 Q. Okay. You wanted him
13 to perform it?

14 A. We wanted him to use
15 it, yeah.

16 Q. Okay. Did that happen?

17 A. Did it happen?

18 Q. Did he use it as a
19 single for his breakout performance?

20 A. No. No.

21 Q. Why not?

22 A. Because it presented an
23 opportunity with Usher.

24 Q. Okay.

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1 A. And I think you heard
2 from Wil's testimony yesterday that we
3 were left with the choice to either go
4 with it for himself --

5 Q. Right.

6 A. -- or to have Usher
7 perform Club Girl.

8 Q. You knew about that
9 choice?

10 A. I heard about it, yeah.

11 Q. Okay. And who told you
12 about that choice?

13 A. Which?

14 Q. The choice you are
15 saying, either for Wil Guice to
16 perform this song as a single --

17 A. It was --

18 Q. -- or Usher?

19 A. Sorry.

20 Q. Thank you. You'll get
21 it. We'll get it going.

22 A. It was discussed
23 between myself, Dante and Wil.

24 Q. Can you describe the

Page 146

1 conversation with any detail?
 2 A. Not really, other than
 3 it was a decision we needed to make.
 4 Are we going to use this for Wil or
 5 are we going to use this opportunity
 6 to have Usher sing the same song?

7 Q. And what was the
 8 decision?

9 A. The decision was that
 10 we were going to allow Usher to sing
 11 the song.

12 Q. And when was that
 13 decision made?

14 A. I couldn't tell you.
 15 Before the record came out.

16 Q. Fair statement.

17 A. I just don't know when.

18 Q. So it was sometime
 19 before March of 2004?

20 A. '04, yeah.

21 Q. Okay.

22 A. And with the
 23 understanding that we all get our
 24 equal songwriting and publish --

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1 production as we agreed upon.

2 Q. That was an agreement
 3 between you, Barton and Guice?

4 A. It was an agreement
 5 that the only way that song was to be
 6 authorized to Usher was with that
 7 understanding. Without that, there
 8 would have been no authorization.

9 Q. And Mr. Barton was
 10 someone that was going to handle those
 11 negotiations for you and Mr. Guice?

12 A. That's right.

13 Q. And you gave him the
 14 authority to do that?

15 A. With the understanding
 16 that I was going to be credited
 17 properly, as a songwriter, as a
 18 producer and as an engineer.

19 Q. But you gave him
 20 permission to present the song to
 21 Usher for his use?

22 MR. MALOFIY:

23 Objection.

24 THE WITNESS: With that

Page 148

1 understanding.

2 BY MR. DAVIS:

3 Q. Is it fair to say that
 4 you, Mr. Barton and Mr. Guice wanted
 5 Club Girl to be exploited
 6 commercially?

7 MR. MALOFIY:

8 Objection.

9 THE WITNESS: Not
 10 stolen.

11 BY MR. DAVIS:

12 Q. That is not my
 13 question.

14 MR. MALOFIY: He is
 15 answering your questions very
 16 thoroughly. That is the
 17 problem, you don't like the
 18 truth. You don't like the
 19 truth, it disturbs you.

20 You've never seen the truth in
 21 a deposition. You've seen
 22 lots of lies by a lot of
 23 people. This is the truth.

24 BY MR. DAVIS:

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1 Q. Is it true that you,
 2 Mr. Guice and Mr. Barton wanted Club
 3 Girl to be commercially exploited?

4 A. Only if we were
 5 credited properly.

6 Q. So the answer is yes?

7 A. The answer is I didn't
 8 want to have it taken from me without
 9 being properly credited. That is my
 10 answer.

11 Q. But you left it to Mr.
 12 Barton --

13 MR. MALOFIY:

14 Objection. He answered your
 15 question thoroughly. You
 16 don't like the answer, too
 17 bad. The answer is the
 18 answer.

19 MR. DAVIS: Could you
 20 read back the question,
 21 please.

22 - - -

23 (At this time the court
 24 reporter read back from the

Page 150

1 record as was requested.)

2 - - -

3 MR. MALOFIY: He
4 answered that repeatedly.
5 BY MR. DAVIS:

6 Q. Please answer the
7 question.

8 A. What is true is that I
9 wrote the song, and the song was
10 stolen from me. That is what is true.

11 Q. Mr. Marino, please
12 answer my question. Did you, Mr.
13 Guice --

14 MR. MALOFIY: He
15 answered it five times now.

16 BY MR. DAVIS:

17 Q. -- and Mr. Marino [sic]
18 want Club Girl --

19 MR. MALOFIY: Next
20 question.

21 BY MR. DAVIS:

22 Q. -- to be commercially
23 exploited?

24 MR. DAVIS: Are you

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1 instructing him not to answer?

2 MR. MALOFIY: I'm
3 telling you, you asked the
4 same question five times. You
5 ask it one more time, you get
6 your answer, you go to the
7 next question.

8 MR. DAVIS: Please, are
9 you instructing him not to
10 answer?

11 MR. MALOFIY: You asked
12 him five times.

13 MR. DAVIS: If you are
14 not instructing him not to
15 answer --

16 MR. MALOFIY: Ask it
17 one more time. You get the
18 same answer, then you go to
19 the next.

20 MR. DAVIS: If you are
21 instructing him not to answer,
22 then I'll move on, but I'm not
23 moving on until he answers the
24 question.

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1 MR. ROGERS: Mr.
2 Malofiy, you are not letting
3 Mr. Davis finish the question.
4 I can't even hear him.

5 THE WITNESS: He has
6 asked it five times. I gave
7 him the same answer.

8 MR. ROGERS: I can't
9 even hear the second part of
10 the question, so I don't know
11 if he's asked it before or
12 not.

13 MR. MALOFIY: On the
14 transcript, it will show very
15 clearly, just like the
16 transcript from yesterday
17 showed that Guice knew he was
18 a defendant, just like you
19 misrepresented that to the
20 court. So I don't want to
21 hear your claptrap. I don't
22 want to hear these stories.
23 The transcript is the
24 transcript. You asked him

Page 153

1 five times the same question,
2 he gives the same answer. You
3 don't like it, too bad. That
4 is the truth. Now ask it one
5 more time.

6 MR. ROGERS: Let's
7 proceed.

8 BY MR. DAVIS:

9 Q. Mr. Marino, did you,
10 Mr. Guice and Mr. Barton want Club
11 Girl to be commercially exploited?

12 MR. MALOFIY:
13 Objection. You can answer it.

14 THE WITNESS: With the
15 understanding that I was going
16 to be properly credited, Wil
17 was going to be properly
18 credited and Dante was going
19 to be properly credited for
20 our contributions of
21 songwriting, producing,
22 engineering, performing on the
23 song.

24 BY MR. DAVIS:

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1 Q. And you left that to
2 Mr. Barton to make sure that that
3 happened; is that right?

4 MR. MALOFIY:

5 Objection. You can answer.

6 THE WITNESS: I had Mr.
7 Barton take care of a lot of
8 my business affairs, but with
9 that being said -- I don't
10 even know how to really
11 answer.

12 BY MR. DAVIS:

13 Q. Did you permit Mr.
14 Barton to negotiate with Usher or his
15 representatives for the use of Club
16 Girl that you have testified yourself,
17 Mr. Barton and Mr. Guice collaborated
18 on?

19 MR. MALOFIY:

20 Objection. Asked and answered
21 about ten times. You can
22 answer again.

23 THE WITNESS: I've
24 given my answer to that.

Page 155

1 BY MR. DAVIS:

2 Q. So the answer is yes,
3 you did give --

4 A. I never said yes.

5 MR. MALOFIY:

6 Objection.

7 BY MR. DAVIS:

8 Q. Did you not give Mr.
9 Barton consent?

10 A. I never authorized
11 anyone to steal my song. Okay. I
12 never authorized anyone to use my song
13 without me being properly credited,
14 and that is my answer.

15 MR. MALOFIY: There you
16 go.

17 THE WITNESS: That is
18 my answer.

19 BY MR. DAVIS:

20 Q. Did you give Mr. Barton
21 permission to speak with the Usher
22 camp with respect to the use of Club
23 Girl?

24 A. I never had to sit

Page 156

1 there -- I never gave anyone
2 permission without me being properly
3 credited.

4 Q. Are you telling me that
5 what you stated in your complaint is
6 not correct?

7 MR. MALOFIY: Here you
8 go with your claptrap again.

9 THE WITNESS: That is
10 not what I said. My song was
11 stolen from me, and you defend
12 these people.

13 MR. DAVIS: There is no
14 question.

15 MR. MALOFIY: Let him
16 finish.

17 THE WITNESS: And you
18 are defending these people,
19 and you're basically saying
20 that stealing is acceptable.

21 BY MR. DAVIS:

22 Q. I'm going to turn to --
23 can I have the complaint, please.
24 Thank you. I would like you to look

Page 157

1 at paragraph 308. Is that statement,
2 as you alleged it in the complaint,
3 true or false?

4 MR. MALOFIY: Which
5 page?

6 MR. DAVIS: Paragraph
7 308.

8 MR. MALOFIY: On which
9 page?

10 MR. DAVIS: It is
11 paragraph 308.

12 THE WITNESS: I don't
13 have the rest of it.

14 BY MR. DAVIS:

15 Q. It is right behind it.
16 Paragraph 308. Just tell me whether
17 that allegation is true or false.

18 MR. MALOFIY: He
19 answered this the last ten
20 minutes, and it is the same
21 answer he is going to give you
22 for the next ten minutes or
23 the next three hours. You are
24 going to keep on asking the

Page 158

1 question trying to get an
2 answer that wants to fit your
3 lies and your stories, but the
4 answer is the answer, the
5 truth is the truth, and he'll
6 give it to you again, Mr.
7 Davis, because apparently you
8 are confused by what happened
9 here.

10 Give him the answer.

11 THE WITNESS: 308 is
12 with the understanding that I
13 would be properly credited and
14 compensated for the song.

15 BY MR. DAVIS:

16 Q. My question is, is 308
17 in any way alleged inaccurately?

18 A. No, it is -- it is with
19 the understanding that I, Wil and
20 Dante were to go off of our agreement.

21 Q. I'm not quibbling with
22 you. What I'm asking you is --

23 A. I answered it.

24 MR. MALOFIY: He

Page 160

1 you sit here and ask the same
2 question because you don't
3 like the answer you get. You
4 asked him multiple times the
5 same question, he's answered
6 it. All right. That is what
7 happened. You don't like the
8 answer, too bad. He is under
9 sworn testimony. He is giving
10 you what you wanted.

11 BY MR. DAVIS:

12 Q. I'm asking you one more
13 time, is there anything in 308, as
14 you've alleged it, that you would like
15 to change, yes or no?

16 A. It is not a yes-or-no
17 answer. I told you my answer.

18 Q. The yes is yes, I
19 accept it as it's stated. If it is
20 no, it is no, then you can tell me
21 what you want to change.

22 MR. MALOFIY: No, see,
23 he is not rewriting the
24 complaint here.

Page 159

1 answered your question.

2 BY MR. DAVIS:

3 Q. -- is paragraph 308, as
4 it is alleged, accurate and correct,
5 or do you want to change that
6 allegation?

7 MR. MALOFIY: He just
8 added -- he just told you.

9 You asked him the question
10 about 308, he told you his
11 answer, you don't like it, too
12 bad. Next question.

13 BY MR. DAVIS:

14 Q. Are you changing your
15 answer to --

16 A. I'm not changing
17 anything from what I said.

18 MR. MALOFIY: He just
19 told you --

20 THE WITNESS: I just
21 told you what I said.

22 MR. MALOFIY: Listen,
23 now. No. No. No. We are
24 not playing this game where

Page 161

1 THE WITNESS: I feel
2 like are you are tricking me
3 with law questions, and I just
4 don't feel comfortable.

5 BY MR. DAVIS:

6 Q. I'm not trying to
7 trick you here. I'm just trying to
8 get answers from you.

9 A. I feel -- I don't trust
10 you. You are defending people that
11 stole stuff from me, so I just don't
12 trust you. I got to be straight with
13 you, Mr. Davis, you are defending
14 thieves.

15 Q. I'm going to assume you
16 don't want to change anything from
17 308?

18 A. I am not telling you
19 that. I don't know how to answer your
20 question.

21 MR. MALOFIY: He is not
22 a lawyer, he is not writing
23 the complaint or amended
24 complaint.

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1 THE WITNESS: I don't
2 know how to answer your
3 question --

4 MR. MALOFIY: He
5 answered your question.

6 THE WITNESS: -- other
7 than what I said.

8 BY MR. DAVIS:

9 Q. Paragraph 309, is that
10 allegation accurate?

11 A. I didn't understand
12 anything you just said.

13 Q. Is paragraph 309, as it
14 is alleged, is it accurate?

15 A. I need to read it.

16 Q. It is right here.

17 A. Marino, Barton and
18 Guice agree that each would share
19 equally a respective one-third
20 interest in the songwriting credits of
21 the song. A previous --

22 Q. I'm asking --

23 A. -- before the comma --
24 before the comma it says, consistent

Page 163

1 with the prior agreement, okay, which
2 I don't know what that means in this
3 -- I'm confused here at this moment.

4 I don't know what consistent with the
5 prior agreement is referring to.

6 Q. This your complaint,
7 Mr. Marino.

8 A. I understand that, but
9 you are --

10 Q. This is the one you
11 approved for filing.

12 MR. MALOFIY: Let him
13 answer your question. Don't
14 cut him off.

15 THE WITNESS: I
16 understand that, but I don't
17 feel like you are being very
18 straight with me, and I feel
19 like you are tricking me with
20 your questions. Okay? And I
21 understand what you are
22 saying, you want me to agree
23 or not agree with 309. What
24 I'm trying to tell you is I'm

Page 164

1 confused at this moment with
2 the first five words of that
3 statement. I am.

4 BY MR. DAVIS:

5 Q. So looking at your own
6 complaint, you can't tell me --

7 A. I'm a bit confused.
8 I'm not an attorney.

9 Q. So are you telling me
10 you are unfamiliar with your
11 complaint?

12 A. I'm familiar with my
13 complaint --

14 MR. MALOFIY: Ask him a
15 question.

16 THE WITNESS: -- but
17 the way you are trying to get
18 -- the way you are approaching
19 this question, I don't feel
20 comfortable with -- I just
21 don't trust you, man, straight
22 up.

23 BY MR. DAVIS:

24 Q. Let me ask you

Page 165

1 differently.

2 A. It is like you are
3 tricking me.

4 Q. Is there anything in
5 this complaint that you want to
6 change?

7 A. No.

8 MR. MALOFIY:

9 Objection. He is not a
10 lawyer.

11 BY MR. DAVIS:

12 Q. You stand on this
13 complaint?

14 A. No, I don't know --
15 right now I don't know what you are
16 trying to do, but I feel as though
17 whatever you did to Wil Guice
18 yesterday to fluster him, you are kind
19 of doing it to myself, and I would
20 like a break right now.

21 MR. DAVIS: Take a
22 break.

23 VIDEOGRAPHER: The time
24 is now 1:22 p.m. We are going

Page 166

1 off the record.

2 ---

3 (At this time a short
4 break was taken.)

5 ---

6 VIDEOGRAPHER: Okay.
7 The time is now 1:24 p.m. This
8 concludes DVD number one in
9 the deposition of Daniel
10 Marino. We are going off the
11 record.

12 ---

13 (At this time a short
14 break was taken.)

15 ---

16 VIDEOGRAPHER: The time
17 is now 1:36 p.m., and this
18 begins DVD number two in the
19 deposition of Daniel Marino.

20 BY MR. DAVIS:

21 Q. Mr. Marino, tell me
22 what authority you gave Mr. Barton to
23 negotiate on your behalf for Club
24 Girl --

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1 MR. MALOFIY:

2 Objection.

3 BY MR. DAVIS:

4 Q. -- with the Usher
5 representatives who were interested in
6 recording Club Girl?

7 MR. MALOFIY: Objection
8 you can answer.

9 THE WITNESS: I'm
10 sorry. Can you rephrase that,
11 please?

12 BY MR. DAVIS:

13 Q. You don't understand
14 that question?

15 A. It is not that I don't
16 understand it.

17 MR. MALOFIY: It is a
18 long question, compound
19 question, and you got to break
20 it down.

21 MR. DAVIS: Before Mr.
22 Malofiy interrupted me, what
23 was the question, so that you
24 can repeat it to the witness?

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1 ---

2 (At this time the court
3 reporter read back from the
4 record as was requested.)

5 ---

6 THE WITNESS: The
7 authority that I gave him was
8 that, with the understanding
9 that I was properly credited
10 as a songwriter, one-third, I
11 was properly credited as a
12 producer, 50 percent, to
13 negotiate Usher to re-sing and
14 rerecord my performance.

15 BY MR. DAVIS:

16 Q. So subject to those
17 caveats, you did give Mr. Barton
18 authority to negotiate on your behalf
19 for Club Girl?

20 MR. MALOFIY:

21 Objection. I think he
22 answered this question before
23 the break. Now, after the
24 break you can ask it again as

Page 169

1 many times as you want. Do it
2 100 times. What you want is
3 you want a little piece of
4 information, but what you are
5 getting is you are getting the
6 truth, and you can't handle
7 the truth.

8 MR. DAVIS: Mr.
9 Malofiy, you are interrupting
10 the answer. There is a
11 question posed, and it is
12 impermissible for you to do
13 that. I ask you not to do it.

14 MR. MALOFIY: What is
15 happening here is you are
16 going to sit here for three
17 hours asking the same
18 question, and you are going to
19 try to break my witness, but
20 he is not going to break
21 because he knows what the
22 story is, and the truth is
23 always the truth. There is
24 only one truth. Go ahead,

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1 answer the question.

2 THE WITNESS: I feel
3 like this is the same question
4 you posed before the break.
5 BY MR. DAVIS:
6 Q. I asked you fairly, and
7 I'm certainly not trying to trick you,
8 Mr. Marino, I just want your honest
9 and truthful testimony. All I am
10 asking is subject to the caveats you
11 expressed, did you give Mr. Barton
12 authority to negotiate on your behalf
13 for Club Girl?

14 MR. MALOFIY:
15 Objection. Asked and
16 answered, repeatedly. All
17 right. And furthermore,
18 caveats.

19 THE WITNESS: With the
20 understanding that I, Wil and
21 Barton were to be properly
22 credited for the song Club
23 Girl that I originally wrote
24 on my own, Barton negotiated

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1 with Usher, whom I met, okay,
2 and also knew that I wrote the
3 song and produced the song, as
4 well as Bobby Ross Avila, as
5 well as Jimmy Jam and Terry
6 Lewis, as well as Tommy Van
7 Dell, as well as Mark Pitts,
8 all knew that I originally
9 wrote that song. He spoke to
10 your camp and negotiated the
11 song Club Girl.

12 BY MR. DAVIS:

13 Q. Okay. We'll get into
14 the conversations that you are
15 reporting in a moment. So he had
16 authority?

17 MR. MALOFIY:
18 Objection.

19 THE WITNESS: He had
20 authority on my behalf, so
21 long as, the only way --
22 otherwise, it would have been
23 no authorization, period. The
24 only way he was authorized to

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1 speak on my behalf was if I
2 was properly credited.
3 BY MR. DAVIS:

4 Q. That was an
5 understanding you had with Mr. Barton?

6 MR. MALOFIY:
7 Objection.

8 THE WITNESS: Mr.
9 Barton and everyone else that
10 knew in your camp and all the
11 other defendants on here that
12 knew about it, yes. As long
13 as they all knew I was
14 properly credited, then he had
15 the authority. Without that,
16 there was no authority.

17 BY MR. DAVIS:

18 Q. The conversation you
19 had with Mr. Barton about Usher using
20 the song, was anyone else present when
21 you had that conversation?

22 A. With Usher?

23 MR. MALOFIY:
24 Objection.

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1 THE WITNESS: I didn't
2 understand the question.

3 BY MR. DAVIS:

4 Q. The conversation that
5 you are telling me about when you gave
6 Mr. Barton instructions of how Club
7 Girl could be used, was anyone else in
8 the room with you?

9 MR. MALOFIY:
10 Objection. You characterized
11 it as a conversation.

12 THE WITNESS: I can't
13 recall that anyone else was
14 there other than Wil. Tommy
15 Van Dell was around. Other
16 than that, I really don't
17 remember who was in the room.

18 BY MR. DAVIS:

19 Q. Okay. Where was this
20 conversation, or conversations, if it
21 was more?

22 A. It was in the studio,
23 most likely.

24 Q. In Pennsylvania?

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1 A. Absolutely.
 2 Q. Okay.
 3 A. And also we did speak,
 4 I did speak with Tommy Van Dell on the
 5 airplane ride back from Nashville in
 6 regards to this.

7 Q. Okay. I'll ask you
 8 questions about that in a moment.

9 At some point did Mr.
 10 Barton tell you that a deal had been
 11 reached for Usher to record and
 12 perform a version of Club Girl?

13 MR. MALOFIY:

14 Objection. You can answer.

15 THE WITNESS: I'm going
 16 to say your question just to
 17 make sure I heard it correct.

18 You are asking me, did Barton
 19 tell me at some point that he
 20 negotiated a deal with Usher?

21 BY MR. DAVIS:

22 Q. For Usher to perform
 23 and record a version of Club Girl.

24 MR. MALOFIY:

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1 that song was potentially going to go
 2 to Santana for his record, so a lot of
 3 times I don't like to overexcite
 4 something. So I may or may not have
 5 told someone. I don't know.

6 Q. You just don't
 7 remember?

8 A. If I told someone else
 9 that something may or may not be
 10 negotiated?

11 Q. No. That is not my
 12 question. My question was, you just
 13 don't remember if you told somebody
 14 else?

15 A. If I told someone else?

16 Q. That you had heard that
 17 Mr. Barton had arranged for Club Girl
 18 to be recorded and performed by Usher?

19 MR. MALOFIY:

20 Objection. You can answer.

21 THE WITNESS: I'm
 22 trying to remember if I told
 23 anyone else. I may have. I
 24 may not have.

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1 Objection. You can answer.

2 THE WITNESS: Yes.

3 BY MR. DAVIS:

4 Q. Do you remember when
 5 that was?

6 A. Exact date, no.

7 Q. Wasn't that an
 8 important moment for you when you
 9 heard that?

10 A. Very exciting.

11 Q. Tell me more about how
 12 you felt when you heard that.

13 A. I felt like it was a
 14 pretty surreal moment. Like, you
 15 know, I wrote a song that Usher is now
 16 going to just re-sing and use my
 17 original recording for. It was
 18 exciting.

19 Q. Did you tell anybody
 20 when you heard that news?

21 A. I may have. I don't
 22 remember. I had many situations where
 23 one of my songs could have been picked
 24 up by an artist. As a matter of fact,

Page 177

1 BY MR. DAVIS:

2 Q. How did you and Mr.
 3 Barton feel when you were together and
 4 he told you that news?

5 MR. MALOFIY:

6 Objection.

7 THE WITNESS: Excited,
 8 but I didn't want to get too
 9 excited about it because
 10 nothing is really done until
 11 it officially happens.

12 BY MR. DAVIS:

13 Q. Okay. Did you speak to
 14 Mr. Guice about it?

15 A. Of course, we were
 16 working on the song together.

17 Q. Well, what did Mr.
 18 Guice have to say when he heard the
 19 news?

20 A. He was a little
 21 apprehensive. He wanted to use it for
 22 himself, he wasn't sure. I think you
 23 heard that in his testimony yesterday.

24 Q. But was he happy, too?

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1 A. Yeah, I would say he
2 was slightly happy. Slightly
3 bittersweet.
4 Q. Did you think about
5 what the possibilities were if Usher
6 sang a version of Club Girl and it
7 became a hit?
8 A. I don't recall.
9 Q. You don't remember
10 that?
11 A. No.
12 Q. Okay. When Mr. Barton
13 told you the news that a deal was
14 being struck for Usher to record and
15 perform Club Girl, did you tell him,
16 no, I don't want to do it?
17 A. I don't remember if I
18 did or if I didn't.
19 Q. You don't remember?
20 A. That's correct. I
21 don't remember if I did or if I didn't
22 tell him no or yes.
23 Q. Well, the fact that Mr.
24 Raymond Usher sang a version of Club

Page 179

1 Girl which appeared in Confession,
2 would that lead you to believe that
3 you didn't tell Mr. Barton, no, I
4 don't want to do it?
5 MR. MALOFIY:
6 Objection. You can answer.
7 THE WITNESS: No.
8 BY MR. DAVIS:
9 Q. No, what?
10 A. Maybe I misunderstood
11 your question. Can you say it again?
12 Q. Well, we know that a
13 version of Club Girl was sung by
14 Usher.
15 A. It was the same song.
16 MR. MALOFIY:
17 Objection.
18 THE WITNESS: It wasn't
19 a different version.
20 BY MR. DAVIS:
21 Q. I won't quibble with
22 you about the song, but Usher did sing
23 the song?
24 MR. MALOFIY:

Page 180

1 Objection.
2 THE WITNESS: Usher
3 copied the song, yeah.
4 BY MR. DAVIS:
5 Q. Does that refresh your
6 recollection of whether or not, when
7 Mr. Barton told you that a deal was
8 being made for Usher to record and
9 perform the song, that you said to Mr.
10 Barton, no, I don't want to go forward
11 with it?
12 MR. MALOFIY:
13 Objection, are you trying to
14 say that he said this?
15 THE WITNESS: I
16 don't --
17 MR. MALOFIY: What are
18 you trying to do?
19 THE WITNESS: I don't
20 recall.
21 BY MR. DAVIS:
22 Q. Did you know at some
23 point that Club Girl was going to be
24 renamed Bad Girl?

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1 A. At some point before
2 the release of the record, I did know.
3 Q. Okay. Who told you
4 that?
5 A. I'm not sure exactly
6 who was on the phone, but I recall on
7 the other side of the phone I believe
8 either Terry Lewis -- must have been
9 Terry Lewis, because Jimmy Jam
10 apparently got a credit on the record
11 for not doing anything. He got credit
12 as a producer and songwriter on the
13 song that I wrote, and he didn't do
14 anything. We heard that in his
15 testimony. But on the other line,
16 when I heard it was Bad Girl, yeah,
17 that was before the record, I believe
18 Usher was in the room, Mark Pitts and
19 Terry Lewis.
20 Q. You were in the room
21 with the three of them?
22 A. I was in my studio,
23 they were in another studio on the
24 phone as we were working on the

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1 revisions.

2 Q. All I'm asking you is,
3 you did learn that at some point Club
4 Girl was being renamed Bad Girl?

5 A. Yes.

6 Q. And did you voice any
7 opinion about it?

8 A. Yes.

9 Q. What did you say?

10 A. I didn't like it.

11 Q. Did you tell them they
12 couldn't do that?

13 A. I didn't tell them that
14 they couldn't do that.

15 Q. Okay. And you didn't,
16 because they changed the name, say,
17 Usher can't perform the song, record
18 it?

19 MR. MALOFIY:

20 Objection. Objection. You
21 can answer.

22 THE WITNESS: What I
23 said was, I don't like it.

24 BY MR. DAVIS:

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1 point in time when you learned that
2 Club Girl, now renamed Bad Girl,
3 appeared on the Confessions album?

4 A. Did I?

5 Q. Yes.

6 A. Yes, of course.

7 Q. When was that?

8 A. Prior to the release of
9 the record, like I just said, when we
10 were on the phone, working on the
11 revisions.

12 Q. And who told you that
13 it had made the album?

14 MR. MALOFIY: You are
15 talking about the first time
16 he heard it?

17 MR. DAVIS: There is a
18 question pending, sir.

19 THE WITNESS: I don't
20 remember --

21 MR. MALOFIY: Really?

22 THE WITNESS: -- who
23 the first person was. To my
24 recollection, I would say the

Page 183

1 Q. That's all you said?

2 A. And I continued to try
3 to make it something better for what
4 they were looking for.

5 Q. When you say you were
6 trying to make it something better for
7 what they were looking for, what do
8 you mean?

9 A. Well, they wanted us;
10 me, Dante and Wil, to change the
11 original recording that I started and
12 change the chorus. They changed it
13 from what I really enjoyed the song
14 being as Club Girl, talking about
15 girls in clubs, to talking about bad
16 girls, and I didn't like the way that
17 rang.

18 Q. But you went along with
19 it anyway?

20 A. Yeah.

21 MR. MALOFIY:

22 Objection. You can answer.

23 BY MR. DAVIS:

24 Q. And did there come a

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1 official time that I heard it
2 was when I heard it on the
3 record, when I knew that it
4 was going to happen for sure.
5 You said, like, when is it
6 going to happen for sure, like
7 this is definitely going to
8 make the record. And again
9 like I stated earlier, I never
10 like to get my hopes up too
11 high until it's pressed and
12 until I saw an official copy.
13 That is when I officially
14 knew.

15 BY MR. DAVIS:

16 Q. I'm a little confused
17 by what you said. So when was it that
18 you first learned that it had made the
19 album?

20 MR. MALOFIY: He just
21 answered the question.

22 THE WITNESS: The day
23 of the release of the record.

24 BY MR. DAVIS:

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1 Q. And what was your
2 reaction when you learned that Bad
3 Girl was going to be -- was on the
4 Confessions album?

5 MR. MALOFIY:

6 Objection.

7 THE WITNESS: Excited,
8 happy.

9 BY MR. DAVIS:

10 Q. You were happy?

11 A. Yeah.

12 Q. Why were you happy?

13 A. Because it made it on a
14 very successful record.

15 Q. Why would that be
16 important to you?

17 A. Because you work your
18 whole life as a musician, as an
19 artist, as I did, to get to a point
20 where you can have everyone hear your
21 work. I knew on an Usher record, that
22 millions of people would listen to my
23 work, that is why I was excited. It
24 is an accomplishment. People spend

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1 their whole lives and never make it
2 there, and I did, and then they stole
3 it from me.

4 Q. But at the time that
5 you learned that it was on the album,
6 it was being available, because you
7 said you learned when it was released?

8 A. Correct.

9 Q. You were excited, and
10 would it be a correct word be, proud
11 that it was on the album?

12 A. I was proud of my work,
13 yes.

14 Q. At the time of the
15 release did you ever have a desire to
16 tell the record company, stop the
17 presses, you cannot release this song
18 on this album?

19 MR. MALOFIY:

20 Objection.

21 THE WITNESS: I don't
22 understand why you are asking
23 me that.

24 BY MR. DAVIS:

Page 188

1 Q. Did you ever, when you
2 learned that Bad Girl appeared on
3 Confessions, the Confessions album,
4 did you tell anyone, you can't sell
5 the record?

6 A. Mr. Davis, this is why
7 I think you are being sneaky, because
8 I just told you how --

9 Q. I'm not trying to be
10 sneaky.

11 MR. MALOFIY: Let him
12 answer the question.

13 MR. DAVIS: He is not
14 going to call me sneaky when I
15 ask him a direct question.

16 MR. MALOFIY: You've
17 been sneaky this whole
18 litigation, you have.

19 MR. DAVIS: Mr.
20 Malofiy, those are
21 inappropriate comments.

22 MR. MALOFIY: You might
23 not like it, but it is the
24 truth.

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1 MR. DAVIS: It is
2 inappropriate, and I think it
3 is a violation of your ethical
4 duties.

5 MR. MALOFIY: Let me
6 tell you something, I am not
7 afraid to call somebody out.

8 MR. DAVIS: Before Mr.
9 Malofiy interrupted the
10 questioning, would you please
11 read back the question?

12 MR. MALOFIY: You are
13 not used to someone who is
14 straight.

15 - - -

16 (At this time the court
17 reporter read back from the
18 record as was requested.)

19 - - -

20 MR. MALOFIY: You were
21 going to answer, you
22 interrupted him. You
23 interrupted him, Mr. Davis.

24 BY MR. DAVIS:

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1 Q. Could you answer that
2 question for me?

3 A. Why would I tell anyone
4 that when I'm so excited about it?
5 This is why I'm saying you're being
6 tricky. I don't get you, man. Like,
7 you are not being straight. For real,
8 what is going on?

9 Q. Is the answer to the
10 question you didn't tell anyone to
11 stop selling the record?

12 A. Absolutely I didn't.
13 Why would I tell anyone to stop
14 selling the record of my work that
15 millions of people are going to hear,
16 that I'm proud of, that it took me
17 years to get to, all the hard work,
18 all the hours, all the money, all the
19 time? Why on Earth would I tell
20 someone, don't put it on that record,
21 because I was told that it was going
22 to be my -- my song was going to be
23 properly credited?

24 Q. It was a momentous day

Page 191

1 for you?

2 A. Yes, it was.

3 Q. Would you say it was
4 the best day of your life?

5 A. Absolutely not.

6 Q. Besides your marriage?

7 A. No.

8 Q. One of the best days of
9 your life?

10 A. Yes.

11 Q. Okay. Can you share
12 with us what the best day of your life
13 is?

14 A. That is private.

15 MR. MALOFIY: That is
16 when we win this case.

17 BY MR. DAVIS:

18 Q. When the album
19 Confessions was released, you
20 understood that it was going to be
21 available for sale in stores and
22 online, did you not?

23 A. Yes.

24 Q. When did you first, to

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1 the best of your memory, learn that
2 you could actually purchase
3 Confessions?

4 A. The day it was
5 released.

6 Q. And what date was that?

7 A. I don't recall,
8 February -- I don't know. Whenever it
9 was released.

10 Q. In 2004 though, do you
11 remember that?

12 A. 2004, yes.

13 Q. Okay. Did you see
14 advertisements for the album
15 Confessions?

16 A. I don't remember if I
17 did or didn't.

18 Q. Did you understand that
19 they would probably be advertising the
20 album?

21 MR. MALOFIY:

22 Objection. You can answer.

23 THE WITNESS: I don't
24 know. The one advertisement

Page 193

1 would have been the single,
2 yeah, that came out prior to
3 the record, I would say.

4 BY MR. DAVIS:

5 Q. What single?

6 A. Yeah.

7 Q. Oh, Yeah.

8 A. I would call that an
9 advertisement for the record.

10 Q. Well, you are an
11 industry guy. You have been in the
12 record business for a long time, at
13 least that is what your resume says
14 and you testified to. Is that what
15 record companies normally do,
16 advertise albums that are available
17 for purchase?

18 MR. MALOFIY: Objection
19 to your characterization,
20 being in the record industry
21 for a long time. There is a
22 difference between a huge
23 label that you are used to
24 working with.

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1 MR. DAVIS: Mr.
2 Malofiy, can he answer the
3 question?

4 MR. MALOFIY: Let's not
5 be tricky.

6 MR. DAVIS: This is not
7 a conversation. I'm trying to
8 get some answers.

9 Before Mr. Malofiy
10 interrupted, can you read back
11 the question, please.

12 - - -

13 (At this time the court
14 reporter read back from the
15 record as was requested.)

16 - - -

17 THE WITNESS: I would
18 say yes.

19 BY MR. DAVIS:

20 Q. Okay. So you
21 understood that it was likely that the
22 album Confessions, which had A Bad
23 Girl on the album --

24 MR. MALOFIY:

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1 one copy of the album available for
2 purchase when you went down to buy it
3 that day?

4 A. I would think so. I
5 don't remember counting or looking, I
6 just grabbed one, possibly, probably.

7 Q. When you went down to
8 that store that day, were you thinking
9 that this album was now available all
10 over the country for consumers to
11 purchase?

12 A. I thought it was
13 available all over the world.

14 Q. All over the world?

15 A. Yes.

16 Q. So you thought that
17 when you went into the store, that,
18 wow, everybody in the world can buy
19 this now?

20 A. I believe so, yeah.

21 Q. Did you hear any of the
22 songs on the Confessions album on the
23 radio?

24 A. At what time?

Page 195

1 Objection, Bad Girl.

2 BY MR. DAVIS:

3 Q. -- would be advertised,
4 distributed and sold publicly?

5 A. I was aware that my
6 song that I originally wrote called
7 Club Girl, on my own, was going to go
8 onto Usher's record that he just
9 basically copied, was going to be for
10 sale, yes.

11 Q. Okay. Did you purchase
12 a copy of the Confessions album when
13 you learned it was available for
14 purchase?

15 A. Yes.

16 Q. Okay. And where did
17 you purchase it?

18 A. I believe it was called
19 Tower Record, now it is FYE or I or
20 something. It's on the corner of
21 Broad and Chestnut.

22 Q. Was there only -- how
23 many copies were -- strike that.

24 Was there more than

Page 197

1 Q. At the time -- at or
2 about the time of the release.

3 A. Prior to the release, I
4 only heard Yeah on the radio, and then
5 after the release, many.

6 Q. Many. Was Bad Girl one
7 of the songs that you heard on the
8 radio?

9 A. Yes.

10 Q. Do you have any
11 recollection about the period of time
12 in which you were hearing Bad Girl on
13 the radio?

14 A. No. After the record
15 was released.

16 Q. Did it go on for six
17 months, a year?

18 A. I don't remember. No.
19 Shortly after.

20 Q. Okay. How did you feel
21 when you heard Bad Girl on the radio?

22 A. I felt like that's
23 really cool, all my hard work, all of
24 my original composition and my writing

Page 198

1 and my producing and engineering made
2 it on the record, and I heard it,
3 finally, on the radio. Big
4 accomplishment.

5 Q. You were proud of that?

6 A. Absolutely.

7 Q. Did you think that
8 you'd made it at that point?

9 MR. MALOFIY:

10 Objection.

11 THE WITNESS: Define
12 made it.

13 BY MR. DAVIS:

14 Q. Did you think you were
15 on your way as a songwriter?

16 A. I was already on my way
17 as a songwriter, that helped.

18 Q. It helped?

19 A. Yes.

20 Q. Did it help because
21 Usher was the performer?

22 MR. MALOFIY:

23 Objection. You can answer.

24 THE WITNESS: That's

Page 199

1 speculating. I don't really
2 know, what if --

3 BY MR. DAVIS:

4 Q. Well, explain to me --

5 A. I want to finish.

6 Q. I'm sorry.

7 A. That is somewhat
8 speculating, because there is a
9 potential that Wil could have released
10 it as a single, and he could have
11 potentially been more successful.

12 Q. Well, you had heard of
13 Usher before there was any talk about
14 this song being on his album, correct?

15 A. I've heard of him, yes.

16 Q. You heard of him. Did
17 you know any of his work before your
18 involvement with Confessions?

19 A. Very little.

20 Q. Did you understand from
21 either Mr. Barton, Mr. Guice or
22 someone else that he was a superstar?

23 A. I learned that, yes.

24 Q. Did you confirm it by

Page 200

1 doing any reading or anything like
2 that?

3 A. Yes.

4 Q. He was, like, on top of
5 the world at that time, right?

6 MR. MALOFIY:

7 Objection.

8 THE WITNESS: I mean,
9 there were stars -- there were
10 other artists that were more
11 successful than him at that
12 time.

13 BY MR. DAVIS:

14 Q. Of course, there is
15 always somebody else.

16 A. He was up there. There
17 is no denying that.

18 Q. How did it help you
19 that Bad Girl was on the Confessions
20 album? You used those words, it
21 helped you.

22 A. Yeah, it helped my
23 confidence big time.

24 Q. Anything else besides

Page 201

1 your confidence?

2 A. Not really. No.

3 Q. Did you think it would
4 give you more exposure?

5 A. It should have, but it
6 didn't.

7 Q. At the time?

8 MR. MALOFIY: Let him
9 finish the question -- finish
10 the answer to your question.

11 MR. DAVIS: Mr.
12 Malofiy, I'd prefer you to use
13 a different tone with me,
14 please.

15 MR. MALOFIY: I'm not
16 going to use the tone I use,
17 and you are not going to
18 adjust my tone and my volume
19 knob over here. All right.

20 THE WITNESS: Can you
21 repeat that?

22 MR. DAVIS: Your
23 counsel keeps interrupting me
24 so it is hard for me to keep

Page 202

1 track of --

2 MR. MALOFIY: You keep
3 on interrupting his answers.
4 You've got to cut that out.

5 MR. DAVIS: What was
6 the last question, please?

7 ---

8 (At this time the court
9 reporter read back from the
10 record as was requested.)

11 ---

12 THE WITNESS: I thought
13 it did -- it thought it would,
14 excuse me.

15 BY MR. DAVIS:

16 Q. When it was on the --
17 strike that.

18 When you learned that
19 the song had been -- album had been
20 released, and it was available in
21 stores, did you then talk about it
22 with friends and family?

23 A. I did.

24 Q. What did you say to

Page 204

1 recently said similar words in this
2 testimony.

3 Q. So that would be
4 accurate?

5 A. Absolutely.

6 MR. DAVIS: Let's mark
7 this as Exhibit 7.

8 ---

9 (At this time a
10 document was marked for
11 identification as Exhibit No.
12 Marino-7.)

13 ---

14 BY MR. DAVIS:

15 Q. I'm going to show you
16 what has been marked Marino Exhibit 7,
17 and this is a -- from one of the
18 documents you produced.

19 A. Okay.

20 Q. And it shows what you
21 have presented as the lyrics to Club
22 Girl and the lyrics to Bad Girl. Are
23 the lyrics identical or not, between
24 the two songs?

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1 your friends and family?

2 A. My song Club Girl,
3 Usher rewrote it -- sorry, didn't
4 rewrite it. He re-sang it, and it
5 made it on his record. Very excited.
6 Exciting.

7 Q. What did they say to
8 you?

9 A. Congratulations.

10 Q. Anything else?

11 A. No. That's awesome,
12 congratulations, good work. I can't
13 recall exact words, but what do
14 friends say to friends or family say
15 to friends when someone makes a huge
16 accomplishment?

17 Q. You said in the
18 complaint that you felt that you were
19 one of the few who had, quote,
20 achieved a level of success in the
21 music industry most others have never
22 attained. Do you still agree with
23 that statement?

24 A. I feel like I just

Page 205

1 A. They are identical.

2 Q. They are. Look at the
3 third line on Club Girl on the intro.
4 Do you see that? It says um.

5 A. The third line, um,
6 yeah.

7 Q. Go on the other side of
8 the intro. You see what it says on
9 the third line there?

10 A. Yes.

11 Q. What it do, uh-uh?

12 MR. MALOFIY: I just
13 want to be clear, are you
14 representing this is accurate?

15 MR. DAVIS: I'm taking
16 your own document, sir.

17 MR. MALOFIY: Are you
18 representing that Bad Girl is
19 accurate?

20 MR. DAVIS: I'm asking
21 him what he presented to the
22 court as the lyrics of the two
23 songs.

24 MR. MALOFIY: So you

Page 206

1 are not making a
2 representation that these are
3 accurate?

4 MR. DAVIS: Are you
5 testifying?

6 MR. MALOFIY: I want to
7 know --

8 MR. DAVIS: If you are
9 going to object --

10 MR. MALOFIY: -- if you
11 are comparing things, I want
12 to know what you are comparing
13 is --

14 MR. DAVIS: Francis,
15 you know, you can make an
16 objection, and then it is all
17 reserved for trial.

18 MR. MALOFIY: I want it
19 to be clear.

20 MR. DAVIS: Let's abide
21 by the rules, please. Abide
22 by the rules.

23 MR. MALOFIY: Listen,
24 you littered my record with

Page 207

1 Van Dell. You coached him to
2 hell, and the judge came and
3 slammed you. Slammed you.

4 MR. DAVIS: That is
5 improper for you to make such
6 statements on the record.

7 MR. MALOFIY: It is the
8 truth.

9 MR. DAVIS: It's not
10 the truth.

11 MR. MALOFIY: You are
12 not used to that in New York.
13 This is Philly.

14 BY MR. DAVIS:

15 Q. Mr. Marino, are the
16 lyrics the same on the third line of
17 Club Girl and the third line of Bad
18 Girl?

19 A. To me, they are.

20 Q. Even though they use
21 different words?

22 A. You have to understand,
23 without the left column there would be
24 no right column.

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1 Q. Putting that aside --

2 A. I can't put it aside.

3 Q. Sir, you will not agree
4 with me that um, U-M, which is on the
5 Club Girl intro, and what it do, uh,
6 in the intro side of the Bad Girl
7 column, are not the same?

8 A. They are the same.

9 Q. They are the same?

10 A. They are the same to
11 me.

12 Q. Okay. I want you to
13 look down to where it says, hook. Do
14 you see -- that is in the Club Girl
15 column. Do you see those lyrics
16 there?

17 A. I do.

18 Q. And do you see what
19 they are opposite to on the Bad Girl
20 side, chorus?

21 A. I do.

22 Q. Are those lyrics the
23 same?

24 A. Mr. Davis, I said this

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1 to you earlier, and I am going to say
2 it again. I wrote the original song,
3 I recorded the original song, and this
4 Club Girl and Bad Girl are the same,
5 identical song. Just because they may
6 or may not have changed a few words
7 doesn't mean that it is not the same
8 song. It's the same song. There is
9 no difference in the song.

10 Q. Does the chorus that
11 appears in Bad Girl appear in Club
12 Girl? The chorus I'm referring to is
13 on the right-hand bottom of the first
14 page of the Bad Girl column, you see
15 that chorus?

16 A. I see it.

17 Q. Does that appear in the
18 Club Girl column?

19 MR. MALOFIY: Allow him
20 to answer your question before
21 you cut him short.

22 BY MR. DAVIS:

23 Q. Please review the
24 document. I want you to inspect the

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1 whole document and tell me if you see
2 those lyrics in Club Girl.

3 A. I just don't understand
4 how you know the truth now, and you
5 keep defending these people. It is
6 unreal. Like, you should be doing the
7 right thing, Mr. Davis. You know that
8 is the same song. You are asking me
9 that I gave them my original
10 composition, and the only thing that
11 they did was add to it, and you want
12 me to testify that it is not the same
13 song. It is the same song.

14 Q. I'm asking you --

15 A. It is the same song.
16 That is my answer.

17 Q. -- are the lyrics the
18 same in the Club Girl column and the
19 Bad Girl column?

20 A. Yes.

21 Q. Word for word?

22 A. It is the same song.
23 I'm a producer, I'm a musician, I'm an
24 engineer, I can tell you, just like

Page 211

1 everyone else did on your end, the
2 people that you are defending, saying
3 it is the same song. I'm going to say
4 it again, it is the same song.

5 Q. Mr. Marino, all I want
6 you to do is answer my question.
7 Answer my question.

8 MR. MALOFIY: You asked
9 him a question.

10 BY MR. DAVIS:

11 Q. Is it your testimony
12 that a side-by-side comparison between
13 Club Girl and Bad Girl would yield,
14 word for word, the same lyrics, is
15 that your testimony?

16 A. It is the same song,
17 that is my testimony.

18 Q. So you won't answer my
19 question?

20 MR. MALOFIY: He did
21 earlier.

22 THE WITNESS: I am
23 answering it, it's the same
24 song.

Page 212

1 BY MR. DAVIS:

2 Q. My question is --

3 MR. MALOFIY: Stop.

4 BY MR. DAVIS:

5 Q. -- whether it is the
6 same --

7 MR. DAVIS: Unless you
8 direct him not to answer, you
9 cannot --

10 MR. MALOFIY: Look, I'm
11 not going to play this game
12 where you asked the question
13 multiple times, he answered
14 it. He answered the question
15 you asked about specific
16 lyrics. It is actually in the
17 transcript, but maybe you have
18 a fleeting memory and you
19 don't remember what he said.
20 Ask him again. He will answer
21 again.

22 MR. DAVIS: Francis,
23 you understand, this is all on
24 tape and it is all captured

Page 213

1 for the judge.

2 MR. MALOFIY: Wow, you
3 know what, I know what the
4 truth is and I know what you
5 have done in this proceeding.

6 BY MR. DAVIS:

7 Q. I'll ask you one more
8 time, Mr. Marino, and you can choose
9 not to answer if you want, but are you
10 testifying that the lyrics on the Club
11 Girl column are identical to the
12 lyrics on the Bad Girl column?

13 A. Yes, it is the same
14 song.

15 Q. Okay. Does Club Girl
16 have a bridge in it?

17 A. No.

18 Q. Okay. Does Bad Girl
19 have a bridge?

20 A. My song Club Girl does
21 not have a bridge. However, after I
22 handed them my original recordings,
23 they added a bridge to my song, which
24 is Club Girl, Bad Girl, same song.

Page 214

1 Q. So Bad Girl has a
2 bridge but Club Girl doesn't have a
3 bridge?

4 A. There was a bridge
5 added to Bad Girl.

6 MR. DAVIS: Could you
7 read back his answer, please.

8 - - -

9 (At this time the court
10 reporter read back from the
11 record as was requested.)

12 - - -

13 BY MR. DAVIS:

14 Q. My question is, there
15 -- was there a bridge added to Bad
16 Girl?

17 MR. MALOFIY: He just
18 answer that.

19 THE WITNESS: Can you
20 repeat, what I just answered?

21 By MR. DAVIS:

22 Q. I'm sorry if I asked
23 you that before.

24 A. Okay. So there was a

Page 215

1 bridge added to Club Girl. There was
2 a bridge added to Club Girl that was
3 renamed Bad Girl.

4 Q. You are saying Club
5 Girl had a bridge originally?

6 A. No, I'm saying there
7 was a bridge added to Club Girl, which
8 is Bad Girl, same song.

9 Q. So, you are trying to
10 confuse me now. I understand.

11 A. I'm not.

12 Q. So the newly named Club
13 Girl, Bad Girl, there was a bridge
14 added to it?

15 MR. MALOFIY: When you
16 say, just to be clear on the
17 record, are you referring
18 to --

19 MR. DAVIS: I'm not
20 taking questions from you.

21 BY MR. DAVIS:

22 Q. The question is, Club
23 Girl, which was renamed Bad Girl, has
24 a bridge; is that correct?

Page 216

1 A. Yes.

2 Q. The original Club Girl
3 does not have a bridge?

4 MR. MALOFIY: When you
5 say, original, it is very
6 confusing. There are 50
7 different versions --

8 MR. DAVIS: Will you
9 stop talking?

10 MR. MALOFIY: No,
11 because you are playing games.

12 BY MR. DAVIS:

13 Q. Did the Club Girl that
14 you originally wrote with Mr. Guice
15 and Mr. Barton have a bridge?

16 A. We considered,
17 partially, the hook to be the bridge.

18 Q. Was it the same bridge
19 that appears in the Club Girl that was
20 renamed Bad Girl?

21 MR. MALOFIY: Music or
22 lyrics? Be clear.

23 BY MR. DAVIS:

24 Q. Is it the same?

Page 217

1 A. No.

2 Q. Thank you. Does Club
3 Girl, that was renamed Bad Girl, have
4 a hook that is different than the one
5 in Club Girl that you, Mr. Guice and
6 Mr. Barton wrote?

7 A. It is the same song,
8 Club Girl, Bad Girl. They added
9 different words to the song.

10 Q. Just words?

11 A. To my recollection,
12 yes.

13 Q. No additional melody?

14 A. It is the same song.

15 Q. Did the bridge that
16 appeared in the Club Girl that was
17 renamed Bad Girl have different
18 melodies than the Club Girl that you
19 and Mr. Guice and Mr. Barton --

20 A. I got to hear it. I
21 don't remember exactly.

22 Q. Okay. Did the Club
23 Girl that was renamed Bad Girl have
24 additional guitar parts than what

Page 218

1 appeared in the Club Girl that you,
2 Mr. Guice and Mr. Barton wrote?

3 A. I need you to rephrase
4 that. That is confusing.

5 Q. Did the Club Girl that
6 was renamed Bad Girl have additional
7 guitar parts added that were not in
8 the Club Girl that you, Mr. Barton and
9 Mr. Guice wrote?

10 A. Yes.

11 Q. Okay. Did the Club
12 Girl that was renamed Bad Girl have
13 additional drums, drumbeat, that was
14 not in the Club Girl that you, Mr.
15 Guice and Mr. Barton wrote?

16 A. No.

17 Q. No?

18 A. There were
19 enhancements.

20 Q. Okay. But there was
21 additions?

22 A. Enhancements.

23 MR. MALOFIY:

24 Objection.

Page 219

1 THE WITNESS: Same --
2 BY MR. DAVIS:

3 Q. What do you describe an
4 enhancement as?

5 A. I can say the word
6 enhancement, or I can say enhancement.
7 I put a little extra to it, same word,
8 a little flare to it.

9 Q. And how do you do that
10 musically?

11 A. You add on top of it.
12 They copied my song, man. They took
13 my song, they copied it, they re-sang
14 it, and they added on top of it, beat
15 for beat.

16 Q. The enhancements that
17 you are describing --

18 A. Yes.

19 Q. -- would that -- can
20 you tell me what you heard as those
21 enhancements in the Club Girl that
22 became Bad Girl?

23 A. Reverb.

24 Q. What is reverb?

Page 220

1 A. Room sound.

2 Q. Can you be more
3 specific?

4 A. (Indicating.) Hear
5 that? That is reverb. They added
6 reverb in the drums.

7 Q. Any other enhancements
8 that you recall?

9 A. No.

10 Q. All right. When you
11 went down to the record store to
12 purchase a copy of the Confessions
13 album, did you open the CD and look at
14 the liner notes?

15 A. I did.

16 Q. Okay. And did you look
17 for the information pertaining to Bad
18 Girl?

19 A. Yes.

20 Q. Okay. And were you
21 credited as a co-writer or coproducer?

22 A. I was not.

23 Q. Okay. And did you
24 receive credit as a guitarist on the

Page 221

1 Bad Girl track?

2 A. I did.

3 Q. Did you believe you
4 should have been credited as a
5 co-writer and coproducer of Bad Girl?

6 A. Without a doubt. Do I
7 believe, yes, I should have been as a
8 songwriter, as a producer, as an
9 engineer, as a guitar player, yes.

10 Q. Did you speak to Mr.
11 Barton about this?

12 A. I did.

13 Q. Did you tell Mr. Barton
14 that there was a mistake in the liner
15 notes?

16 A. He told me there was a
17 mistake in the liner notes.

18 Q. Explain to me what
19 happened when you saw him, if you saw
20 him, when this conversation took
21 place.

22 A. I said something along
23 the lines of -- I don't remember word
24 for word what I said, but there seems

Page 222

1 to be a mistake, and he agreed, and he
2 said, I will make sure to contact
3 Usher's camp and take care of it.

4 Q. Where was this
5 conversation?

6 A. In my studio.

7 Q. Okay. Was it a heated
8 discussion?

9 A. It was -- it was really
10 a weird conversation, because I wanted
11 to be real excited, and I was, but you
12 know, being mis -- I was miscredited
13 on the liner notes, and I didn't know
14 if that meant I was miscredited on the
15 actual copyright. I didn't know if
16 those two were the same or not. So
17 when he assured me that he talked to
18 -- he was going to talk to Usher's
19 people, then he did, and Usher's
20 people told him that they were going
21 to take care of it, and he
22 communicated that to me, I felt
23 confident that everything was going to
24 be okay.

Page 223

1 Q. Mr. Barton communicated
2 that to you?

3 A. He told me that Usher's
4 people, corporate, would take care of
5 it. They told him that.

6 Q. You said that you were
7 concerned about the copyright? That
8 was part of your answer.

9 A. I said I wasn't sure.
10 I'm telling you now because now I'm
11 more attuned to it, and at the time I
12 wasn't really sure what it all meant,
13 but yeah, I wasn't sure if those two
14 were connected. Something I see on a
15 piece of paper here, does it mean that
16 it didn't get on this piece of paper,
17 so I wasn't sure.

18 Q. So you had an
19 understanding there was some kind of
20 copyright paper?

21 A. Yeah.

22 Q. And did you alert Mr.
23 Barton of your concern about the
24 copyright paper, too?

Page 224

1 MR. MALOFIY:

2 Objection.

3 THE WITNESS: I alerted
4 him that I just wanted to make
5 sure that I get credited
6 properly.

7 BY MR. DAVIS:

8 Q. Was anybody present
9 when you had this conversation with
10 Mr. Barton?

11 A. I don't remember. I'm
12 trying to think. I'm trying to think.

13 Q. Okay.

14 A. I can't remember if
15 there was anyone present. We were in
16 the studio, I know that.

17 Q. Was this the same day
18 you purchased the Confessions album?

19 A. Probably.

20 Q. Did anyone other than
21 Mr. Barton directly tell you that the
22 mistake was going to be corrected?

23 A. Yes.

24 Q. Who else told you?

Page 225

1 A. When I was at the
2 Grammys I had a quick conversation
3 with the brothers, Avila brothers, and
4 I mentioned it to them in passing, and
5 they said to me, you are with good
6 people, don't worry, they'll take care
7 of it. I expressed it to Tommy Van
8 Dell. He said, it will get taken care
9 of. Wil Guice, they are the people I
10 actually told. Usher, I met him, and
11 he recognized me as a producer and
12 songwriter and said, good work. Other
13 than that, I'm not really quite sure.

14 Q. Do you want to take a
15 phone call?

16 A. No, I just wanted to
17 mute it. It was buzzing. It's quite
18 distracting.

19 Q. When did you have the
20 conversation with Wil Guice about the
21 mistake?

22 A. Did I say Wil Guice?

23 Q. Yeah, I thought I heard
24 Wil Guice. We can have the reporter

Page 226

1 check.

2 THE WITNESS: Did I say
3 Wil Guice? I don't recall.

4 - - -

5 (At this time the court
6 reporter read back from the
7 record as was requested.)

8 - - -

9 BY MR. DAVIS:

10 Q. So I want to focus on
11 the Wil Guice conversation. Tell me
12 about that.

13 A. I apologize, that is a
14 mistake. I'm a little excited through
15 this conversation, and I meant to say
16 Dante Barton.

17 MR. DAVIS: Just give
18 me one moment, please.

19 MR. MALOFIY: Sure.

20 BY MR. DAVIS:

21 Q. In your complaint, in
22 paragraph 376 on page 52, you say,
23 Marino also spoke to Guice, who agreed
24 with Marino that Marino should have

Page 227

1 been properly credited as an equal
2 songwriter with Barton and Guice, and
3 as an equal producer with Barton.
4 Guice further went on to say that the
5 whole thing was wrong, and that Barton
6 was the one who needed to fix the
7 credit to reflect Marino as a
8 songwriter and producer of the song
9 Bad Girl. Guice additionally stated
10 that it was Barton's matter to handle
11 and postured a hands-off approach, and
12 that it was an issue that Marino
13 needed to resolve with Barton. Do you
14 recall that allegation?

15 MR. MALOFIY: Can you
16 just direct me to what
17 paragraph? I apologize.

18 MR. DAVIS: 376.

19 THE WITNESS: I do.

20 BY MR. DAVIS:

21 Q. Did you speak with Mr.
22 Guice about the mistake?

23 A. I did, and I spoke to
24 Mr. Barton as well.

Page 228

1 Q. Okay. And what did Mr.
2 Guice do to help you?

3 A. I really don't recall
4 what he did to help me.

5 Q. Did he do anything?

6 A. At this moment I can't
7 remember.

8 Q. Well, he said yesterday
9 that he didn't know about the problem
10 until he got the complaint in October
11 -- I mean November of 2012. Do you
12 remember that?

13 MR. MALOFIY:

14 Objection.

15 BY MR. DAVIS:

16 Q. Of 2011, I'm sorry.

17 MR. MALOFIY:

18 Objection.

19 THE WITNESS: I do
20 remember.

21 BY MR. DAVIS:

22 Q. Was he lying?

23 A. I just --

24 MR. MALOFIY:

Page 229

1 Objection.

2 THE WITNESS: -- like
3 he said in his testimony, he
4 doesn't have the best memory.

5 BY MR. DAVIS:

6 Q. And he just forgot?

7 MR. MALOFIY:

8 Objection.

9 THE WITNESS: It is
10 possible. I do recall him
11 saying that.

12 BY MR. DAVIS:

13 Q. Do you know Mr. Guice
14 to be forgetful?

15 MR. MALOFIY:

16 Objection.

17 THE WITNESS: I
18 couldn't say.

19 BY MR. DAVIS:

20 Q. But in your mind you
21 believe you definitely told him --

22 A. Yeah.

23 Q. -- that there was a
24 problem?

Page 230

1 A. Yes.
2 Q. Okay. The day that you
3 told Mr. Barton that there was a
4 mistake in the credits, was that a day
5 that you were going to commemorate the
6 fact that the song Bad Girl appeared
7 on the Confessions album?

8 A. Yes.

9 Q. Had you planned
10 something in advance?

11 A. No.

12 Q. Was it an impromptu
13 party?

14 MR. MALOFIY:

15 Objection.

16 THE WITNESS:

17 Impromptu, can you please
18 elaborate?

19 BY MR. DAVIS:

20 Q. It just -- suddenly
21 happened?

22 A. Yeah, from my
23 recollection I came to the studio and,
24 yeah, he was happy.

Page 231

1 Q. And you -- were there
2 any other people that were going to
3 participate in this celebration?

4 A. I don't remember anyone
5 else. Possibly Dante may have had
6 someone there, but I couldn't tell you
7 who it was, maybe a girl, some girl he
8 was dating or something.

9 Q. I believe you said in
10 your complaint that he was popping
11 some champagne?

12 A. Yes, he had champagne.
13 He was ready to go.

14 Q. He was very happy?

15 A. Yeah, who wouldn't be?

16 Q. You were happy other
17 than the fact that the credit --

18 A. There was a mistake.
19 Excuse me for interrupting, yes.

20 Q. I'll say it again. You
21 were happy other than the fact that
22 you were not credited in the liner
23 notes?

24 A. I was happy that my

Page 232

1 song Club Girl made it on the
2 Confessions album.

3 Q. And after you had your
4 discussion with Mr. Barton about the
5 mistake and he told you he would get
6 it fixed, did you participate in the
7 celebration?

8 A. Yes.

9 Q. How did you celebrate?

10 A. How?

11 Q. Yeah.

12 A. Had a glass of
13 champagne, put in the record, the
14 Confessions album, and listened to it.

15 Q. The one you just
16 purchased?

17 A. That's correct.

18 Q. And you put it in a
19 player and you listened --

20 A. Put it in the computer,
21 yes.

22 Q. Let me finish, please.

23 A. Sorry.

24 Q. You took the CD that

Page 233

1 you just purchased at the store, put
2 it in a CD player, and listened to the
3 song and drank champagne?

4 A. I can't recall if I put
5 the CD in, if he put it in, if it was
6 a CD that I bought, a CD that he
7 bought. I can't remember those
8 specific details, but we listened to
9 the entire album.

10 Q. Bad Girl being one of
11 the songs?

12 A. Number 12.

13 Q. Number 12. Was it a
14 very joyous time for you?

15 MR. MALOFIY:

16 Objection.

17 THE WITNESS: For the
18 50th time, yes, it was a very
19 joyous time. I'm going to say
20 for the record when the album
21 came out, I was very excited.
22 You don't have to ask it
23 again.

24 BY MR. DAVIS:

Page 234

1 Q. Okay. Tell me what Mr.
2 Barton told you he would do to fix the
3 mistake that day when you were
4 celebrating the release of the
5 Confessions album that included Bad
6 Girl.

7 MR. MALOFIY:

8 Objection. You can answer.

9 THE WITNESS: He said,
10 I'll take care of it, I'll
11 contact Usher's camp, Mark
12 Pitts, and make sure it gets
13 fixed.

14 BY MR. DAVIS:

15 Q. When you refer to
16 Usher's camp, you mean Mr. Pitts?

17 A. Mr. Pitts, corporate,
18 whoever he had contact with that --
19 you know, I really wasn't deeply
20 involved in, yeah, Jimmy Jam, Terry
21 Lewis, possibly Usher.

22 Q. Other than Mr. Pitts,
23 you didn't have any names of people --

24 MR. MALOFIY: He just

Page 235

1 said --

2 BY MR. DAVIS:

3 Q. -- you understood he
4 was going to speak with?

5 MR. MALOFIY: He just
6 said.

7 THE WITNESS: The
8 people that I mentioned, Mark
9 Pitts, he mentioned Mark
10 Pitts, and he said Usher's
11 camp, so when someone says
12 Usher's camp -- like if you
13 said that to me, we are going
14 to contact your camp, you are
15 going to contact someone
16 within my organization.

17 BY MR. DAVIS:

18 Q. Okay. Did Mr. Barton
19 tell you that the mistake in the liner
20 notes was a printing error?

21 A. Yeah.

22 Q. Did he also tell you it
23 was an accident?

24 A. I don't remember if he

Page 236

1 said it was an accident. He said it
2 was an error, it was a mistake in the
3 liner notes.

4 Q. And he told you that it
5 would be changed to reflect your name?

6 A. Yes, as a songwriter
7 and a producer and an engineer, and as
8 a matter of fact, I pointed out that
9 Wavelab Studios, where I originally
10 recorded my composition of Club Girl,
11 needed to be fixed as well, because on
12 the liner notes it says that Wavelab
13 Studios is additional recording when
14 it is quite the opposite. The
15 original song was recorded in Wavelab
16 Studios, the additional recordings
17 were done elsewhere.

18 Q. You wanted all these
19 things fixed?

20 A. Absolutely.

21 Q. Other than Mr. Barton,
22 did anyone tell you to your face that
23 the credits were wrong?

24 A. Wrong?

Page 237

1 Q. That there was a
2 mistake in them?

3 A. Yeah, I said that
4 earlier, who that was.

5 Q. Tommy Van Dell?

6 A. Tommy Van Dell, the
7 Avila brothers. Usher recognized us
8 as songwriter, producer, and -- who am
9 I missing? I guess that's -- yeah,
10 those people.

11 Q. Okay. After you
12 discovered the mistake in the liner
13 notes, and you had the conversation
14 with Mr. Barton, did you continue to
15 work with Mr. Barton?

16 A. Many years after that.

17 Q. How many years?

18 A. Until he disappeared.

19 Q. 2009, approximately?

20 A. Roughly.

21 Q. Came in each day?

22 A. Everything was normal,
23 great friends, spent holidays
24 together, ate dinner, went out,

Page 238

1 partied, wrote probably three to
2 five-hundred songs together since
3 then.

4 Q. And you continued to do
5 this even though during that period of
6 time, the credits had not been fixed
7 and you had not gotten --

8 MR. MALOFIY:

9 Objection.

10 BY MR. DAVIS:

11 Q. -- until 2005, any
12 money on Bad Girl?

13 MR. MALOFIY:

14 Objection.

15 BY MR. DAVIS:

16 Q. Is that correct?

17 MR. MALOFIY: You are
18 misstating.

19 THE WITNESS: I
20 continued to work with Dante
21 Barton after all of that
22 because he kept telling me
23 that Usher's people told him
24 that they were fixing the

Page 239

1 credits for songwriter,
2 producer, engineer, and
3 studio.

4 BY MR. DAVIS:

5 Q. And Usher's people,
6 again, you are saying that was Usher
7 himself, Bobby and Izzy Avila, Tommy
8 Van Dell?

9 A. Whoever else he had
10 communications with, I mean, you know.

11 MR. MALOFIY: He also
12 said just --

13 MR. DAVIS: Don't --
14 you are testifying.

15 MR. MALOFIY: That is
16 not what he said. That is not
17 what he said.

18 MR. DAVIS: I don't
19 need you to tell me what he
20 said. Read back the record
21 before the Mr. Malofiy
22 interrupted me.

23 MR. MALOFIY: That is
24 not what he said.

Page 240

1 MR. DAVIS: Would you
2 read back the question,
3 please.

4 MR. MALOFIY: You
5 didn't read back every word he
6 said. You are saying, you
7 said --

8 MR. DAVIS: Mr.
9 Malofiy --

10 MR. MALOFIY: You left
11 out half --

12 MR. DAVIS: -- you are
13 interrupting the explanation.

14 MR. MALOFIY: It is a
15 half truth. You want to do
16 half truths?

17 MR. DAVIS: You are not
18 going to make statements like
19 that and get away with it.

20 MR. MALOFIY: I get
21 away with the truth.

22 MR. DAVIS: Your
23 actions are being captured on
24 that camera.

Page 241

1 MR. MALOFIY: I am very
2 comfortable with my actions.
3 They are not --

4 MR. DAVIS: Could we
5 have the question read back,
6 please.

7 - - -

8 (At this time the court
9 reporter read back from the
10 record as was requested.)

11 - - -

12 THE WITNESS: The Avila
13 brothers as well.

14 BY MR. DAVIS:

15 Q. Bobby Avila?

16 A. Bobby and Izzy.

17 Q. So those four people?

18 A. Mark Pitts.

19 Q. And Mark Pitts. Okay.

20 A. And whoever else he was
21 communicating with, the names of whom
22 I may not know.

23 Q. Okay. Did you get
24 media attention after the Confessions

Page 242

1 album was released?

2 A. We were, as you know,
3 in a magazine, a local magazine.

4 Q. Did you arrange that
5 interview with the magazine?

6 A. Did I arrange it?
7 People came to me and asked if I would
8 want to be a part of it, as well as my
9 writing and producer partner.

10 Q. And who is that who
11 came to you?

12 A. The person that came to
13 me for the magazine?

14 Q. Yes.

15 A. A person by the name of
16 Anthony, I believe Corrado was his
17 last name.

18 Q. Was Anthony Corrado a
19 friend of yours?

20 A. Acquaintance.

21 MR. MALOFIY: Marino-8.

22 MR. DAVIS: I'm going
23 to show you what has been
24 marked as Marino-8.

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1 - - -

2 (At this time a
3 document was marked for
4 identification as Exhibit No.
5 Marino-8.)

6 - - -

7 MR. MALOFIY: Thank
8 you. I appreciate it.

9 BY MR. DAVIS:

10 Q. And you are familiar
11 with that, the exhibit?

12 A. I am.

13 Q. What is that exhibit?

14 A. It is a magazine
15 entitled Origination magazine, it is a
16 cover, a copy of, similar to my song.

17 Q. And it says,
18 Confessions of a Record Producer, do
19 you see that in the title there?

20 A. Confessions of a Record
21 Producer.

22 Q. Is that a play on the
23 Confessions album?

24 A. I would imagine so, but

Page 244

1 I can't say with certainty.

2 Q. And are you telling me
3 this was the cover of the magazine?

4 A. That's correct.

5 Q. You were the feature
6 article?

7 A. Yes.

8 Q. Okay. And the cover
9 has a photograph of Mr. Barton, Mr.
10 Guice and yourself in the studio?

11 A. Yes.

12 Q. And this was after
13 Confessions had been released, this
14 photograph?

15 A. It says it in the top
16 left-hand corner, yes.

17 Q. Where does it say --

18 MR. MALOFIY: May 2004.

19 BY MR. DAVIS:

20 Q. I know the date of the
21 magazine, but the photograph was taken
22 after the release of the Confessions
23 album?

24 A. Yes.

Page 245

1 Q. Okay. And they came to
2 you, to your studio, in order to take
3 this photograph and support the album?

4 A. Yes.

5 Q. I mean the article?

6 A. The article, yes.

7 Q. No one forced you to be
8 in that picture?

9 A. No.

10 Q. You wanted to be in the
11 picture?

12 A. Yes.

13 Q. Why did you want to be
14 in the picture?

15 A. Because I was proud of
16 my work.

17 Q. You were proud of the
18 fact that your work had been used by
19 Usher on an album that had been
20 publicly released?

21 MR. MALOFIY:

22 Objection.

23 THE WITNESS: I was
24 proud of the fact that my song

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1 that I originally recorded,
 2 that your defendants stole
 3 from me, yes, I was proud of
 4 that.
 5 BY MR. DAVIS:
 6 Q. There is more than one
 7 photograph of you and your partners,
 8 songwriting partners --
 9 A. Yes.
 10 Q. -- in this article; is
 11 that right?
 12 A. Yes.
 13 Q. On page -- the third
 14 page of this exhibit, at the top, that
 15 is a picture of the three of you
 16 again, right?
 17 A. Yes.
 18 Q. And nobody forced you
 19 to sit in that picture, did they?
 20 A. No. I'd really
 21 appreciate it if you just got to your
 22 question, because it's --
 23 Q. Let's turn to the
 24 fourth page. That's yet another

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1 picture of you, Mr. Guice and Mr.
 2 Barton posing for purposes of this
 3 article; is that right?
 4 A. Yes.
 5 Q. And it says, welcome to
 6 the word of Underworld Entertainment?
 7 A. That is what it says.
 8 Q. And you were an owner,
 9 part owner, of Underworld
 10 Entertainment?
 11 A. That's correct.
 12 Q. And are you smiling in
 13 that photograph?
 14 A. As I said before, I was
 15 very excited about it, so, yes, it is
 16 a smile.
 17 Q. And you were all happy
 18 --
 19 A. It would be odd if it
 20 was a frown, wouldn't it?
 21 Q. I'd think it would be.
 22 You are all very happy --
 23 A. Yes.
 24 Q. -- about this article

Page 248

1 coming out?
 2 A. Yes. Yes. Yes.
 3 Q. And tell me, you were
 4 interviewed for the article; is that
 5 correct?
 6 A. Yes.
 7 Q. Did you all -- when I
 8 say all, were you, Mr. Guice, and Mr.
 9 Barton interviewed at the same time?
 10 A. I really don't
 11 remember.
 12 Q. Well, do you remember
 13 speaking with the reporter together or
 14 separately?
 15 A. That is what I'm
 16 answering, I don't remember.
 17 Q. Did the reporter make a
 18 date with you to sit for the
 19 interview?
 20 A. I would imagine so.
 21 Q. You cooperated and made
 22 yourself available for the interview
 23 with the reporter?
 24 A. Naturally.

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1 Q. And you wanted to tell
 2 your story; is that right?
 3 A. Yeah.
 4 Q. Okay. Did you tell the
 5 reporter during your interview that
 6 you objected to the release of the
 7 Confessions album that included Bad
 8 Girl?
 9 MR. MALOFIY:
 10 Objection. You can answer.
 11 THE WITNESS: I don't
 12 recall, I don't recall telling
 13 him, otherwise I believe it
 14 would have showed up in the
 15 article.
 16 BY MR. DAVIS:
 17 Q. So you didn't?
 18 MR. MALOFIY:
 19 Objection.
 20 THE WITNESS: No.
 21 BY MR. DAVIS:
 22 Q. Did you tell the
 23 reporter that you objected to the
 24 commercial sale of the Confessions

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1 album, which included the Bad Girl
2 track?

3 MR. MALOFIY:

4 Objection. You can answer.

5 THE WITNESS: Why would
6 I?

7 BY MR. DAVIS:

8 Q. The article refers to
9 Usher's team of producers asking for
10 the Pro Tools file so he could sing
11 over the verse and the hook. It is in
12 here somewhere, I could find it for
13 you.

14 A. Please do.

15 Q. Okay. Look at the box
16 on the bottom, middle column, and it's
17 the, call it the fourth full paragraph
18 there, beginning, Usher and his team
19 of producers?

20 A. Okay.

21 Q. Do you see that?

22 A. Yes.

23 Q. Is that an accurate
24 statement?

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1 A. Let me read it.

2 MR. MALOFIY: Are you
3 referring to the whole block,
4 or just the middle block, or
5 the --

6 MR. DAVIS: I don't
7 believe the witness has a
8 question about what I'm asking
9 him to look at.

10 MR. MALOFIY: Okay.

11 THE WITNESS: That one
12 paragraph?

13 BY MR. DAVIS:

14 Q. Yes.

15 A. It is true.

16 Q. It is true?

17 A. Yes.

18 Q. So you knew that the
19 Pro Tools files were being sent to
20 Usher's people?

21 A. I did it myself.

22 Q. Oh, you did it?

23 A. Yes.

24 Q. How did you do that?

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1 A. Do you know how to use
2 Pro Tools? Because if I explain it to
3 you, I don't know if you'll understand
4 it.

5 Q. Maybe I'll ask you a
6 different question. Did you mail the
7 Pro Tools files to them?

8 A. I believe we mailed it.

9 Q. And who did you address
10 it to?

11 A. Whoever Dante, because
12 Dante and I did it together, whoever
13 we addressed it to is whoever he
14 provided the address and name for it.

15 Q. So they -- you were
16 asked for the Pro Tool files, and you
17 sent them?

18 A. Little bit of work
19 involved, it wasn't that simple, but
20 yes.

21 Q. Tell me what the work
22 was. Did it involve --

23 A. Well, we -- sorry. Go
24 ahead.

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1 Q. What is involved in
2 getting Pro Tools files ready so that
3 you can send them to someone else?

4 A. This particular
5 recording was originally recorded into
6 Logic, which is a different software
7 application. So I transferred it, as
8 the engineer, from Logic to Pro Tools,
9 so that they could use it, because
10 they didn't use Logic.

11 Q. So if you sent them
12 Logic, they couldn't use it?

13 A. If I sent them Logic,
14 they could use it, they would have to
15 have a Logic system.

16 Q. You wanted to make it
17 easier for them?

18 A. Absolutely. Excuse me,
19 that was at their request for Pro
20 Tools files. They requested Pro Tools
21 files.

22 Q. Right. And you sent
23 them to them?

24 A. Sure.

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1 Q. Did you learn that it
2 had been received by whomever you sent
3 it to?

4 A. Yes.

5 Q. Do you remember -- you
6 may not remember the specific name of
7 who you sent it to, but do you know if
8 it was a company that you sent it to?

9 A. I don't.

10 Q. You don't. Okay. Do
11 you have a recollection of when you
12 had sent it?

13 A. I mean, obviously
14 before the release of the record,
15 before the revisions, because Terry
16 Lewis had the Pro Tools files and, you
17 know, just to be clear again, I mailed
18 those Pro Tools files with the
19 understanding that I would be properly
20 credited as the songwriter and
21 producer, and not have it stolen from
22 me.

23 Q. Did you put a note in
24 the Pro Tools files that said that?

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1 A. No, that was not
2 necessary.

3 Q. Okay. When you sent
4 the Pro Tools, did you think in your
5 mind, this is really going to happen
6 now?

7 A. No.

8 Q. You thought it was
9 still --

10 A. Potential.

11 Q. -- potential?

12 A. Yeah.

13 Q. Since you have said
14 that this paragraph is accurate, you
15 understood that --

16 MR. MALOFIY: Which
17 paragraph?

18 MR. DAVIS: The one he
19 read.

20 BY MR. DAVIS:

21 Q. The middle paragraph?

22 MR. MALOFIY: Did he
23 read it?

24 BY MR. DAVIS:

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1 Q. You understood that the
2 Pro Tools files were being sent to cut
3 the first verse and hook, you
4 understood that?

5 A. Yes.

6 Q. Okay.

7 A. And by cutting that, it
8 really just means rerecording, copying
9 what I had already done.

10 Q. But you knew they were
11 going to do that?

12 A. Yeah.

13 Q. And you had no problem
14 with that?

15 A. As long as I was going
16 to be properly credited. If at any
17 point I had known that I wasn't going
18 to be properly credited as a
19 songwriter and as a producer, I would
20 have never sent it out.

21 Q. But you didn't send a
22 note with the Pro Tools files?

23 A. Not necessarily. I was
24 dealing with good people.

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1 Q. And you had this
2 understanding with Mr. Barton about
3 the credit issue?

4 MR. MALOFIY:

5 Objection. That is not what
6 he testified to.

7 THE WITNESS: I had
8 this with multiple people.

9 BY MR. DAVIS:

10 Q. I'm not talking about
11 what happened after the album was
12 released and you discovered the
13 mistake. I'm talking about the
14 understanding about the permission to
15 use the work was one that you had with
16 Mr. Barton, who was going to --

17 A. You've got to start
18 that over. That is too long. I'm not
19 following you.

20 MR. MALOFIY: That is
21 not what he testified to.

22 That is not what he testified.

23 Keep it straight.

24 BY MR. DAVIS:

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1 Q. The conversation or the
2 understanding that you had about the
3 use of the Club Girl was one that you
4 had communicated to Mr. Barton before
5 the use of Club Girl in the making of
6 Bad Girl?

7 A. This is the same
8 question as before.

9 MR. MALOFIY: Let me
10 just put my objection, this is
11 asked --

12 MR. DAVIS: That is all
13 you can do, is object. Why
14 don't you understand that?

15 MR. MALOFIY: Let me
16 tell you something, I don't
17 have to deal with this kind of
18 BS. What is happening here --
19 what is happening here is you
20 ask the same question for
21 about an hour and a half. And
22 then you keep on going back to
23 the question, and it is the
24 same answer. All right. You

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1 are going to get the same
2 answer every time you ask it.

3 MR. DAVIS: Mr.
4 Malofiy, I'm allowed to use my
5 seven hours.

6 MR. MALOFIY: Next
7 question.

8 MR. DAVIS: I'm allowed
9 to use my seven hours as I
10 choose fit. If I waste it, I
11 waste it.

12 MR. MALOFIY: No, I'll
13 just shut it down. I'll shut
14 it down. That is what I will
15 do, I'll say, next question,
16 and we'll go. That is what
17 I'll do. That's what I do
18 when games are being played.

19 BY MR. DAVIS:

20 Q. You had a conversation
21 with Mr. Barton about the terms upon
22 which your Club Girl, which you wrote
23 with Mr. Guice and Mr. Barton, could
24 be used.

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1 MR. MALOFIY: The
2 record is replete with the
3 answer to this question.

4 BY MR. DAVIS:

5 Q. Is that right?

6 A. With the --

7 MR. MALOFIY: This is
8 nauseating -- wait. This is
9 nauseating.

10 MR. DAVIS: You are
11 interrupting the answer.

12 MR. MALOFIY: I am,
13 because this is a waste of
14 everyone's time.

15 MR. DAVIS: Would you
16 reread the question?

17 MR. MALOFIY: I'm
18 nauseated.

19 THE WITNESS: You don't
20 need to. I'm going to give
21 you the same answer, he is
22 absolutely right. With the
23 understanding that I would be
24 properly credited as a

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1 producer, as a songwriter, as
2 an engineer, that then it
3 would be authorized. Without
4 that, there would have been no
5 authorization.

6 BY MR. DAVIS:

7 Q. All I am asking, that
8 was with Mr. Barton?

9 MR. MALOFIY: No. That
10 is not what he testified to
11 earlier, and now you are
12 playing games again. That is
13 his understanding with all the
14 parties. He said it 15 times.
15 You don't want to listen to
16 it, but you've got to open up
17 your ears and listen to what
18 the witness is saying. It is
19 disrespectful and it's rude.

20 BY MR. DAVIS:

21 Q. Mr. Marino?

22 A. Yes.

23 Q. What you are
24 communicating to me is the

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1 conversation you initially had with
2 Mr. Barton; is that correct?

3 MR. MALOFIY:

4 Objection.

5 THE WITNESS: You got
6 to --

7 BY MR. DAVIS:

8 Q. I'm not asking you
9 whether or not you had it with any
10 other people, you had it first with
11 Mr. Barton; is that correct?

12 MR. MALOFIY:

13 Objection. You can answer.
14 If you know what conversation
15 he is talking about.

16 THE WITNESS: I don't.

17 Actually, I don't.

18 BY MR. DAVIS:

19 Q. Okay. Let's move on,
20 then.

21 Did you know Yvonne
22 Gabai -- Gabai, I may be pronouncing
23 it wrong, from the Origivation?

24 A. No.

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1 Q. No?

2 A. No.

3 Q. But you knew Anthony
4 Corrado?

5 A. I had met him prior to
6 that.

7 Q. And he is the one who
8 reached out to you about doing this
9 article?

10 A. Yes.

11 Q. Okay. How many times
12 did Mr. Barton tell you that he was
13 working on fixing the mistake on the
14 credits, approximately?

15 A. I couldn't give you a
16 number. Quite a few, though.

17 Q. Over what period of
18 time did he make these statements to
19 you?

20 A. From the day we were
21 celebrating, as we were discussing
22 earlier, not long prior to him
23 disappearing. Years, several years.

24 Q. Several years. Okay.

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1 Did Mr. Barton ever tell you that Mr.
2 Guice was helping him work out this
3 mistake?

4 A. I don't recall.

5 Q. All right. Your
6 complaint says that many times when
7 you spoke to Barton about correcting
8 the mistake and seeking the status of
9 correcting that mistake, he would say
10 that it was going through corporate,
11 do you recall that?

12 A. Yup.

13 Q. Did he ever tell you
14 who corporate was?

15 A. Yes.

16 Q. Who did you understand
17 corporate to be?

18 A. Everyone that is part
19 of Usher's camp, including Mark Pitts.

20 Q. Well, corporate sounds
21 like you mean people in suits, in a
22 business.

23 MR. MALOFIY: He just
24 told you what he understood

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1 corporate to mean. Now you
2 are playing a game.

3 BY MR. DAVIS:

4 Q. Was there anyone other
5 than Mr. Pitts that you understood to
6 be corporate?

7 A. By name?

8 Q. Yes.

9 A. You know, to me I would
10 say corporate would also entail, even
11 though he may not be the same party,
12 but someone to help, would be a Tommy
13 Van Dell, but we also spoke with other
14 people, whom I mentioned earlier,
15 Usher, one of them who knew, the Avila
16 brothers, and other people that I
17 mentioned.

18 - - -

19 (At this time a
20 document was marked for
21 identification as Exhibit No.
22 Marino-9.)

23 - - -

24 BY MR. DAVIS:

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1 Q. All right. Let me show
2 you your affidavit, which has been
3 marked as Marino-9.
4 A. At some point after
5 this question, can we go on a lunch
6 break?
7 Q. Sure.
8 A. I haven't had anything
9 to eat yet.
10 Q. Sure. I'm sorry.
11 Let's talk about or
12 ask you questions from paragraph five
13 of your affidavit. You are familiar
14 with this affidavit, aren't you?
15 A. Yes, but let me read
16 paragraph five so I can figure out
17 what is paragraph five.
18 Q. Sure.
19 A. Okay.
20 Q. You know, why don't we
21 just take the break now, before I
22 begin questions on this affidavit. It
23 would be simpler. How long would you
24 like to take?

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1 A. I don't know. What is
2 normal for lunch?
3 MR. MALOFIY: Usually
4 it is an hour, but I know we
5 ran late, so what I would like
6 to do -- not you, we were here
7 late, all due respect, and so
8 why don't we try to keep it
9 shorter. You want to say
10 40 minutes?
11 MR. DAVIS: We can do
12 it in 30. We would like to
13 get a train at a reasonable
14 hour. This is going to take
15 the full seven yours.
16 MR. MALOFIY: I
17 understand. I'm not going to
18 clip you. I'm not going to be
19 a jerk and pull my guy out
20 early. Are we getting that?
21 That is excellent, some sauce
22 on the stenographic record.
23 MR. DAVIS: You think
24 you can manage the 30 minutes?

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1 MR. MALOFIY: I'll try
2 my best.
3 VIDEOGRAPHER: The time
4 is now 2:54 p.m. We are going
5 off the record.
6 ---
7 (At this time a short
8 break was taken.)
9 ---
10 VIDEOGRAPHER: The time
11 is now 3:55 p.m. We are back
12 on record.
13 BY MR. DAVIS:
14 Q. Did you have a nice
15 lunch?
16 A. Not really.
17 Q. Okay. Sorry.
18 A. It's not your fault.
19 Q. In your complaint you
20 allege that after you had discovered
21 that Mr. Barton and Mr. Guice had
22 received royalties, more royalties
23 than you had received --
24 MR. MALOFIY:

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1 Objection.
2 BY MR. DAVIS:
3 Q. -- on the Bad Girl
4 track, you went into a, what you
5 called a depression. Do you recall
6 making that allegation?
7 A. I absolutely --
8 MR. MALOFIY:
9 Objection, to your statement.
10 You said more royalties than
11 he received. The record is
12 clear, he didn't receive any
13 royalties. Let's be clear,
14 let's be straight.
15 MR. DAVIS: Mr. Malofiy
16 --
17 MR. MALOFIY: Let's be
18 straight.
19 MR. DAVIS: -- you can
20 object to the question, but
21 you cannot make a speaking
22 objection.
23 MR. MALOFIY: You can't
24 say lies to the guy.

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1 MR. DAVIS: You have
2 repeatedly made speaking
3 objections throughout the
4 course of this deposition, and
5 I ask you again to please
6 stop.

7 MR. MALOFIY: If your
8 questions didn't contain an
9 assumption of facts which was
10 false, it wouldn't be an
11 issue. That is what you do,
12 and that is why we have a
13 problem. You say something
14 that is fake, a lie.

15 BY MR. DAVIS:

16 Q. Mr. Marino -- Mr.
17 Marino, did Dante Barton share
18 royalties with you in 2005 from the
19 Bad Girl track?

20 A. Dante Barton gave me a
21 check with some money that was part of
22 the royalties from Bad Girl.

23 Q. And -- I'm sorry?

24 A. Yes.

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1 Q. And they were the
2 mechanical royalties that he had
3 received from IN2N Publishing; is that
4 correct?

5 A. As far as I know.

6 Q. Okay. So it's accurate
7 to say that you did receive some
8 royalties from Bad Girl through Mr.
9 Barton?

10 A. Some.

11 MR. MALOFIY:

12 Objection. You can answer.

13 THE WITNESS: A very
14 tiny portion.

15 BY MR. DAVIS:

16 Q. It was \$4,553 and some
17 change?

18 A. I believe that's it,
19 yes.

20 Q. And you thought you
21 should receive more; is that correct?

22 A. At that time?

23 Q. Yes.

24 A. At that particular

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1 moment I didn't know anything in
2 regards to how much.

3 Q. But your expectation
4 was that, if not then, at some point
5 you would receive more royalties?

6 A. Yes.

7 Q. Okay. So getting back
8 to my question, when you discovered at
9 Wavelab Studios, or if it was
10 Underworld Entertainment or Destro
11 Music Productions, Inc. --

12 MR. MALOFIY:

13 Objection.

14 BY MR. DAVIS:

15 Q. -- a place of business,
16 when you discovered this box that
17 contained items in it, you saw royalty
18 statements. You said that caused you
19 to go into a depression at some point
20 thereafter; is that correct?

21 A. Yes.

22 Q. Okay. And did you seek
23 treatment from a psychiatrist for that
24 depression?

Page 273

1 A. No.

2 Q. Did you see a
3 psychologist for treatment?

4 A. I wouldn't have thought
5 of doing anything like that, because I
6 wouldn't have known to go to anyone.

7 Q. The answer is no, you
8 didn't see a psychologist?

9 A. No.

10 Q. Did you seek out the
11 service of a therapist?

12 A. No.

13 Q. Did you seek any form
14 of professional counseling?

15 A. I sought my friends and
16 family.

17 Q. I'm talking
18 professional counseling.

19 A. To me that is
20 professional, real love.

21 Q. Love is what you are
22 talking about?

23 A. Yes.

24 Q. But do you have a

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1 family member that is a psychiatrist?
 2 A. I do not.
 3 Q. Do you have a family
 4 member that is a psychologist?
 5 A. No.
 6 Q. Do you have a family
 7 member that is a therapist?
 8 A. No.
 9 Q. In dealing with this
 10 depression that you've described in
 11 your complaint, did you take any
 12 prescription drugs?
 13 A. Without going to a
 14 doctor, no.
 15 Q. Were you ever diagnosed
 16 by any medical doctor that you were
 17 having a depression or emotional
 18 instability?
 19 A. No, but I definitely
 20 didn't leave my house. I didn't talk
 21 to anyone. I just had a hard time
 22 moving from day to day at that time.
 23 Q. Did you stop working?
 24 A. I was late for work and

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1 not really performing well.
 2 Q. Did you seek any
 3 disability payments through any form
 4 of insurance?
 5 A. No.
 6 MR. MALOFIY:
 7 Objection.
 8 BY MR. DAVIS:
 9 Q. Is it accurate to say
 10 that during this period you felt
 11 depressed that you were still
 12 supporting yourself financially?
 13 A. No.
 14 Q. You weren't?
 15 A. I wasn't able to keep
 16 up with my bills at that time.
 17 Q. But you were working?
 18 A. Not as much.
 19 Q. You were working at the
 20 restaurants --
 21 A. Correct.
 22 Q. -- that you had
 23 previously identified as places of
 24 employment that you worked?

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1 A. Yes.
 2 Q. Okay.
 3 A. I went through a slump.
 4 I actually almost foreclosed on my
 5 house at that point.
 6 Q. But you were working?
 7 A. Barely.
 8 Q. How many hours a week
 9 were you working at that time?
 10 A. Maybe 20.
 11 Q. And for how many weeks
 12 or months did that go on?
 13 A. Couple years.
 14 Q. But you didn't seek any
 15 kind of medical or psychological
 16 assistance to help you through this
 17 period?
 18 A. I wouldn't have known
 19 which way to turn at that point in my
 20 life.
 21 Q. Did you have a
 22 girlfriend then?
 23 A. What year?
 24 Q. Would have been, you

Page 277

1 described in your complaint this
 2 occurred sometime in 2009?
 3 A. At that time I had
 4 already broken up with my girlfriend.
 5 Q. You just a moment ago
 6 said that you sought out the
 7 counseling and love of your family; is
 8 that correct?
 9 A. That's correct.
 10 Q. So you had contact with
 11 your family during this period?
 12 A. Yes.
 13 Q. And you also said your
 14 friends?
 15 A. Correct.
 16 Q. When did you break up
 17 with your girlfriend?
 18 A. I couldn't tell you the
 19 exact date, time, but around the time
 20 of maybe 2008 or so. I'm just --
 21 somewhere around there.
 22 Q. And then is your
 23 current wife the next woman that you
 24 became involved with after the breakup

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1 of that relationship?
 2 A. Yes.
 3 Q. What is your wife's
 4 name?
 5 A. Tiffany.
 6 Q. And does she bear the
 7 same last name as you, Tiffany Marino?
 8 A. Not yet.
 9 Q. What is her maiden
 10 name, please?
 11 A. Brauer.
 12 Q. Is she from the
 13 Philadelphia area?
 14 A. Region.
 15 Q. Region. Does she work
 16 in town?
 17 A. She does.
 18 Q. What does she do for a
 19 living?
 20 A. She works for a real
 21 estate firm.
 22 Q. What is her position?
 23 A. I don't really know. I
 24 guess assistant.

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1 Q. Do you talk to her
 2 about this case?
 3 A. Yes.
 4 Q. You alleged in your
 5 complaint that when you were at the
 6 studio sometime in 2009 and discovered
 7 this box of materials, that there were
 8 statements contained in that box, do
 9 you recall that?
 10 A. I do.
 11 Q. Okay. Where are those
 12 statements?
 13 A. Where are those
 14 statements, I believe I provided all
 15 those statements.
 16 MR. MALOFIY: I believe
 17 you are referring to
 18 plaintiff's production 73 to
 19 78, if I'm not mistaken.
 20 MR. DAVIS: Okay. I
 21 have that. Let me mark as
 22 Marino Exhibit 10, a
 23 multi-page document that is
 24 one, two -- six pages in

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1 length.
 2 MR. MALOFIY: Is that
 3 73 to 78, plaintiff's
 4 production?
 5 MR. DAVIS: I'll give
 6 you a copy, sir. I'll show it
 7 to the witness.
 8 ---
 9 (At this time a
 10 document was marked for
 11 identification as Exhibit No.
 12 Marino-10.)
 13 ---
 14 BY MR. DAVIS:
 15 Q. Just take a look at
 16 that exhibit, please. Do you
 17 recognize that document?
 18 A. So far.
 19 Q. Was this the only
 20 documentation that you had found that
 21 day relating to payments of royalties?
 22 What appears in Exhibit --
 23 MR. MALOFIY:
 24 Objection.

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1 BY MR. DAVIS:
 2 Q. -- 10?
 3 A. I believe so.
 4 Q. In your complaint you
 5 allege that Barton and Guice had
 6 received hundreds of thousands of
 7 dollars over the course of many years,
 8 in fact, right from the release of the
 9 Usher Confessions album, including
 10 tens of thousands of dollars in
 11 advances.
 12 MR. MALOFIY: Where is
 13 that?
 14 BY MR. DAVIS:
 15 Q. Where did that
 16 information come from?
 17 MR. MALOFIY: Where are
 18 you reading from, if you are
 19 going to mention the
 20 complaint?
 21 MR. DAVIS: I already
 22 mentioned it. It's paragraph
 23 406.
 24 MR. MALOFIY: I want to

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1 make sure you're reading it
2 correctly, because there were
3 issues with you stating things
4 incorrectly.

5 MR. DAVIS: Mr.
6 Malofiy, I would appreciate
7 you not to denigrate me in the
8 course of this deposition.

9 MR. MALOFIY: Listen,
10 everyone gets treated the way
11 they are supposed to be
12 treated. When you haven't
13 been straight with me, I'm
14 going to call you out on it.
15 That is what you have to
16 understand you are dealing
17 with me. All right. I'm not
18 afraid to say it.

19 Which page?

20 MR. DAVIS: I've said
21 it three times now, paragraph
22 406.

23 MR. MALOFIY: Thank
24 you. This is not in the

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1 facts, this is the claims
2 part, right?

3 MR. DAVIS: Paragraph
4 406, that is all you need to
5 know, Mr. Malofiy, in order to
6 follow the question.

7 MR. MALOFIY: Okay.
8 Thank you.

9 THE WITNESS: Can I
10 also see the document, please.
11 BY MR. DAVIS:

12 Q. Sure. My question to
13 you, sir, is, where did you get the
14 information that there were hundreds
15 of thousands of dollars over the
16 course of many years that Mr. Barton
17 and Guice had received from the track
18 Bad Girl?

19 A. These documents add up
20 to a certain amount to you?

21 Q. What I see in this
22 document at the most is \$112,196 on
23 page 00077 Bates stamp.

24 A. Uh-huh, and these

Page 284

1 others?

2 MR. MALOFIY: Are you
3 representing these are all the
4 royalties that these gentlemen
5 received?

6 MR. DAVIS: Just
7 continue with what you are
8 doing, Mr. Malofiy. It is
9 being captured on the record.
10 You can make an objection.

11 MR. MALOFIY: You don't
12 get it. That is fine, if you
13 want to play tricks.

14 BY MR. DAVIS:

15 Q. This is the statement
16 that you produced in your production.
17 I'm just asking you is this the only
18 statement that you found at the
19 offices in 2009 with regard to royalty
20 payments?

21 A. I'm not sure.

22 Q. You are not sure?

23 A. No, I'm not sure.

24 Q. Well, what did you do

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1 to search your documents in response
2 to the request for documents that was
3 served on your counsel months ago?

4 A. I went through all the
5 documents that I had taken from the
6 studio, and I believe I handed them
7 all in.

8 Q. Did you take a computer
9 from the studio as well?

10 A. Did I take? I didn't
11 take anything, everything belonged to
12 me.

13 Q. Did you remove a
14 computer from the studio?

15 MR. MALOFIY: Objection
16 to the word remove.

17 BY MR. DAVIS:

18 Q. When you were taking
19 things out of the space?

20 A. Yes, I did.

21 Q. And did you search that
22 computer in connection with your
23 document search?

24 A. I did.

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1 Q. And did you turn over
2 the contents of what you found to your
3 lawyer?

4 A. I did.

5 Q. Was this document on
6 that computer?

7 A. I don't believe these
8 documents were on the computer, no.

9 Q. Where were these
10 documents?

11 A. I believe these
12 documents were inside of a binder type
13 of thing, you know, case in the
14 studio.

15 Q. Were there any other
16 royalty statements besides this one
17 that is in front of you that you
18 recall finding?

19 A. You know, it was a
20 really hard time for me, hard thing to
21 find, and I don't recall if these are
22 all of them.

23 Q. Did you look anywhere
24 besides your home for documents in

Page 287

1 response to the document request?

2 A. Would be the only
3 place.

4 Q. Tell me everything you
5 did to look for documents in response
6 to the document request that were
7 served on you?

8 A. I went through whatever
9 files I had on my computer saved, and
10 whatever I had left over that I had
11 taken to my home from the studio.

12 Q. Did you maintain the
13 same computer from 2009 as you have
14 today?

15 A. No.

16 Q. Did you transfer files
17 from the computer you had in 2009 to a
18 new computer?

19 A. I did.

20 Q. Was what you
21 transferred onto your new computer
22 everything that you had as of 2009?

23 MR. MALOFIY:

24 Objection. You can answer.

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1 THE WITNESS: I believe
2 so but I'm not certain.

3 BY MR. DAVIS:

4 Q. You are not certain,
5 why are you not certain?

6 A. Because I could have
7 made a mistake. I'm a human being.

8 Q. Did you delete any
9 files?

10 MR. MALOFIY:

11 Objection. You can answer.

12 THE WITNESS: Not that
13 I recall.

14 BY MR. DAVIS:

15 Q. Did you maintain any of
16 your records at any outside location,
17 like a storage facility?

18 A. No.

19 Q. No. Where did you find
20 the records that you did produce that
21 were not on your computer?

22 A. In my home.

23 Q. Where in your home?

24 A. I have -- at the time I

Page 289

1 had a desk set up in my bedroom, which
2 is like the corner of my room. That
3 was like my office, there.

4 Q. Any place else?

5 A. Any place else what?

6 Q. That you maintained
7 records?

8 A. Not that I can think
9 of, no.

10 Q. Did you withhold the
11 production of any documents in
12 response to the document request?

13 A. Absolutely not.

14 Q. Identify for me the
15 documents that you removed from the
16 premises that each of your businesses
17 were operating from?

18 A. I couldn't possibly
19 tell you all of them because there was
20 a lot of paperwork there when I
21 removed it from the studio to my home,
22 and you got to remember at that time
23 it was very difficult for me to even
24 really think straight because I was in

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1 that slump of a depression. But to my
2 knowledge I removed everything from
3 there and brought it to my home. But
4 you also have to remember that I got
5 stuck selling a lot of equipment, so I
6 would assume everything made it to my
7 home.

8 Q. Tell me what you
9 remember that you brought from the
10 premises where you operated your
11 businesses to your home?

12 A. What I brought? I
13 brought, obviously, this box of
14 documents, pens, pencils, computers,
15 screens, cords, quarter-inch cables,
16 XLR cables, headphones, microphones,
17 microphone stands, my guitars, my
18 base, my keyboard, my clavinet, sound
19 panel that I removed off the wall,
20 sofa -- sofas I should say, chairs,
21 brooms, paintings -- or pictures I
22 should say, they weren't paintings,
23 pre- amps, CD players, recorders,
24 mixing boards, mixing board tables,

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1 MPC, lots of floppy disks, CDs. I'm
2 just going through the items that were
3 in the studio. I'm sure I could keep
4 going but just everything had to be
5 removed because I needed to get out of
6 the space.

7 Q. This document that has
8 been marked Marino-10 is -- at least a
9 cover page has Dante Barton's name on
10 it. Did you take home other documents
11 that were in some way either addressed
12 to or referred to Dante Barton?

13 A. I don't think so.

14 Q. This is the only
15 document that has Dante Barton's name
16 on it?

17 MR. MALOFIY: You say
18 document, you are referring to
19 all six pages?

20 MR. DAVIS:

21 Document 10.

22 THE WITNESS:

23 Document 10. Again, Mr.

24 Davis, I can't be 100 percent

Page 292

1 certain. It was a couple
2 years ago, and as I told you
3 it was a very bad situation
4 for me so my head was not all
5 there at the time removing
6 everything and bringing it
7 back.

8 BY MR. DAVIS:

9 Q. When you found this
10 document, this collection of documents
11 with Dante Barton's name on it did you
12 renew your efforts to try to contact
13 him?

14 A. At the time when I
15 found it? No, I think I was coming at
16 the tail end of trying to contact him
17 when I did find these documents. So I
18 think this was the moment -- the
19 moment at which I realized that
20 something bad had happened.

21 Q. Something bad had
22 happened to whom or what?

23 A. Myself, I had been
24 taken advantage of.

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1 Q. You said in your
2 complaint or the complaint alleges
3 that you had concern that something
4 might have happened to Mr. Barton, do
5 you recall that?

6 A. Yeah.

7 Q. And you thought it
8 might have been something serious; is
9 that correct?

10 A. Yeah.

11 Q. Did you attempt to
12 contact any law enforcement agency to
13 advise them that someone that you had
14 worked with was now missing?

15 A. No.

16 Q. Why didn't you do that?

17 A. I really don't know. I
18 contacted him. I contacted a few
19 friends, people that know him. But,
20 no, I didn't contact any law
21 enforcement. I mean, he is an adult,
22 you know.

23 Q. As I understood the
24 complaint you thought something bad

Page 294

1 might have happened to him?
 2 A. Yeah, possibly.
 3 Q. And this was before you
 4 learned that there were royalty
 5 statements in a box in the office?
 6 A. That's correct.
 7 Q. And your urgency about
 8 his will being was not heightened
 9 enough to go to the police or to any
 10 authorities to say that my friend is
 11 missing and I can't find him, what can
 12 we do?
 13 A. No. No. There were
 14 other times where Dante may have just,
 15 you know, jumped up and left town with
 16 a friend or a girl and did his thing,
 17 so I didn't want to push it into
 18 something that severe, per se, to call
 19 the law enforcement.
 20 Q. For how long did you
 21 make efforts to locate him?
 22 A. I really don't -- I
 23 really don't remember how long.
 24 Q. And after you stopped

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1 looking for him was there at any point
 2 in time that you renewed your efforts
 3 to try to find Mr. Barton to talk to
 4 him about these statements?
 5 A. Can you say that again?
 6 Q. After you had ceased
 7 looking for Mr. Barton did there come
 8 a point in time when you renewed your
 9 efforts to find him?
 10 A. No, I did not.
 11 Q. Weren't you interested
 12 in speaking with him about the check
 13 and statement that you found at the
 14 studio?
 15 A. No.
 16 Q. Why is that?
 17 A. Because it was apparent
 18 what had happened to me.
 19 Q. What was apparent to
 20 you?
 21 A. That my song was stolen
 22 from me.
 23 Q. Can you elaborate at
 24 all?

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1 A. Well, it was apparent
 2 to me that when I found these royalty
 3 statements without my name on them
 4 that they had been receiving monies on
 5 the song that I had wrote on my own.
 6 It was apparent to me that he must
 7 have grabbed some sort of big paycheck
 8 that was not part of these documents
 9 and taken off. That is the way I felt
 10 when I found this.
 11 Q. He being Mr. Barton?
 12 A. Yes.
 13 Q. What about Mr. Guice?
 14 A. What about Mr. Guice?
 15 Q. Did you think he was
 16 part of this circumstance where money
 17 had gone to Mr. Barton and presumably
 18 to Mr. Guice?
 19 A. Yes.
 20 Q. You did think that?
 21 A. Possibly, yes.
 22 Q. Did you try to reach
 23 Mr. Guice at that time?
 24 A. I did.

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1 Q. Did you reach him?
 2 A. No.
 3 Q. Did you know where to
 4 find him?
 5 A. No idea. He had been
 6 missing prior to this and I had no
 7 idea where he was.
 8 Q. For how long did you
 9 search for Mr. Guice?
 10 A. I can't recall.
 11 Q. You gave up?
 12 A. Yeah, as soon as I
 13 found this I gave up.
 14 Q. And you gave up looking
 15 for Mr. Barton?
 16 A. That's correct.
 17 Q. Now you believe that
 18 they were in it -- in on it together?
 19 MR. MALOFIY:
 20 Objection. Mischaracterizes
 21 his testimony completely.
 22 THE WITNESS: Not
 23 necessarily. I didn't know
 24 anything. Like I said, I was

Page 298

1 in this deep depression and
2 couldn't figure out which way
3 was up, so I really didn't
4 know.

5 BY MR. DAVIS:

6 Q. After you came out of
7 that depression what did you figure
8 out?

9 A. After I came out of
10 that I seeked counsel and a lot of it
11 came out.

12 Q. What did you think Mr.
13 Barton had done to you?

14 A. What do I think he had
15 done to me?

16 Q. Yes.

17 A. I really don't know in
18 the sense of what I think he had done.
19 What I know happened was that I didn't
20 get credited properly and that all
21 your defendants made lots of money on
22 a song that I wrote on my own and
23 basically just stole my song.

24 Q. Did you see any of the

Page 299

1 -- strike that.

2 A. You know, additionally
3 I also want to say that with that
4 there hasn't been anyone, not one
5 person on this entire plant that has
6 come up and said, he didn't write the
7 song. So with that you have these
8 people that are just collecting money.
9 This is just a small example of what
10 Dante and Wil grabbed, and I still
11 haven't grabbed anything. And you are
12 sitting here and you keep deposing me
13 and defending these people that are
14 like thieves. What else do you want?

15 Q. Mr. Marino, is it
16 accurate to say that what you want
17 from this lawsuit is credit on the Bad
18 Girl track?

19 A. Partially credit --
20 partially -- excuse me, partially
21 accurate.

22 Q. And is it accurate that
23 what you are also looking for is to be
24 paid your share of money --

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1 MR. MALOFIY:

2 Objection.

3 BY MR. DAVIS:

4 Q. -- for the song?

5 A. Partially accurate.

6 Q. Is it your desire to
7 stop sales of the Bad Girl track?

8 MR. MALOFIY:

9 Objection.

10 BY MR. DAVIS:

11 Q. Is that what you want
12 to achieve from this lawsuit?

13 A. I'm not sure what you
14 mean by stop sales.

15 Q. Stop the ability for
16 anyone to buy that track in the
17 future?

18 MR. MALOFIY:

19 Objection. You can answer.

20 THE WITNESS: No.

21 BY MR. DAVIS:

22 Q. You want the track to
23 continue to be distributed and sold?

24 A. Yes.

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1 Q. Okay.

2 A. With -- with me being
3 properly credited, right.

4 Q. So you don't want
5 record stores to, if there were any
6 today --

7 A. Online record stores.

8 Q. -- to clean off their
9 shelves and not sell the Confessions
10 album any more; is that correct?

11 MR. MALOFIY:

12 Objection. You can answer.

13 THE WITNESS: Say that
14 again.

15 BY MR. DAVIS:

16 Q. It is not your desire
17 to have, if there were record stores,
18 for them to remove from their shelves
19 copies of the Confessions album?

20 A. That is not my desire.

21 Q. Okay. And you would
22 like to see the public have the
23 ability to purchase copies of the
24 Confessions album or Bad Girl as a

Page 302

1 track by itself?

2 A. What I would really
3 like to see is that you and your
4 defense, the people that you are
5 defending be honest and realize that I
6 did write the song, I did produce the
7 song on my own, and that they have all
8 collected monies on my behalf, on a
9 song that I created and just be honest
10 and do the right thing, that is what I
11 would like to see, and for the song to
12 continue to sell, yes.

13 Q. Because you want Bad
14 Girl to be available to the public; is
15 that right?

16 MR. MALOFIY: He just
17 answered that question at
18 length.

19 THE WITNESS: As long
20 as I'm properly credited. If
21 I'm not, yes, I want it
22 pulled.

23 BY MR. DAVIS:

24 Q. Do you think you have

Page 304

1 from Dante Barton and from Wil Guice?

2 MR. MALOFIY:

3 Objection. His answer is his
4 answer.

5 THE WITNESS: The
6 contributions they made were
7 contributions added to the
8 song that I originally
9 created, so I find that I am
10 the original copyright on it,
11 on that song.

12 BY MR. DAVIS:

13 Q. So it is your position
14 that you have the sole right to be the
15 copyright owner of Club Girl?

16 MR. MALOFIY: He
17 already answered that.

18 THE WITNESS: Yes.

19 BY MR. DAVIS:

20 Q. That is your position?

21 A. Yes.

22 Q. Do you believe you have
23 the sole right to determine the use
24 and exploitation of Bad Girl?

Page 303

1 sole control over the use or
2 exploitation of Club Girl?

3 MR. MALOFIY:

4 Objection. You can answer.

5 THE WITNESS: Do I
6 believe -- can you say that
7 again?

8 BY MR. DAVIS:

9 Q. I said, do you believe
10 that you have sole control over the
11 use and exploitation of Club Girl?

12 MR. MALOFIY:

13 Objection. You can answer.

14 THE WITNESS: Can you
15 define sole control?

16 BY MR. DAVIS:

17 Q. That only you can
18 decide what happens to that track?

19 A. Yes.

20 Q. You believe that?

21 A. I do.

22 Q. Even though you
23 acknowledge and have a few times today
24 admitted that you had contributions

Page 305

1 A. Yes.

2 Q. I want you to look at
3 the affidavit that I had marked before
4 the break. I think it's right in
5 front of you.

6 MR. MALOFIY: What is
7 it marked as?

8 MR. DAVIS: Exhibit
9 Marino-9.

10 BY MR. DAVIS:

11 Q. And I would like you to
12 look at paragraph five. Have you had
13 a chance to look at that?

14 A. I did.

15 MR. MALOFIY: Just give
16 me a second to get my papers
17 here. Thank you.

18 BY MR. DAVIS:

19 Q. How many times have you
20 met Usher in person?

21 A. Twice.

22 Q. Twice. Would you tell
23 me each instance, just the approximate
24 date, of when those occurrences were?

Page 306

1 A. 2004, which it says on
2 the affidavit.

3 Q. In August of 2004?

4 A. Yeah.

5 Q. Okay. And when was the
6 other time?

7 A. In Los Angeles a couple
8 weeks ago.

9 Q. You are referring to
10 the deposition?

11 A. Yes.

12 Q. And you were in
13 attendance at his deposition in Los
14 Angeles?

15 A. That's correct.

16 Q. So there were only two
17 instances in which you met him in
18 person?

19 A. Yes, actually the last
20 --

21 Q. I'm asking you in
22 person?

23 A. Yeah, and the last one
24 he actually apologized to me that this

Page 307

1 happened. He said it was very
2 unfortunate and that he is sorry. He
3 also said that when this is over he
4 would like for me to reach out to Mark
5 Pitts and see if we could possibly
6 write some songs together.

7 Q. Is that when we, Mr.
8 Malofiy and I, both asked you both to
9 speak aside and was off the record,
10 whatever you discussed?

11 A. I don't recall off the
12 record or not but --

13 MR. MALOFIY: It wasn't
14 on the stenographic record,
15 was it? Was it on the
16 stenographic record? I don't
17 believe so. Mr. Davis, I
18 don't believe it was on the
19 stenographic record.

20 MR. DAVIS: I'm really
21 not asking you to testify, Mr.
22 Malofiy, but if you would like
23 to we can swear you in and you
24 can sit in the chair.

Page 308

1 MR. MALOFIY: I think
2 the memory might have
3 forgotten we were off the
4 record at that time.

5 BY MR. DAVIS:

6 Q. Where was this
7 August 2004 after party?

8 A. It was at a club here
9 in Philadelphia. I don't recall the
10 name of the club because I do believe
11 it was closed down since then. As you
12 know, clubs -- or may not know, clubs
13 don't really have a long life
14 expectancy, but I'm sure if we did
15 some research and looked into it and
16 found out after that concert where the
17 after party was, that place.

18 Q. Oh, there was a concert
19 in Philadelphia that you attended?

20 A. Yeah, this was the
21 after party.

22 Q. For what concert?

23 A. Usher's concert.

24 Q. Was it a concert that

Page 309

1 you went to?

2 A. It is.

3 Q. And did you purchase
4 tickets for the concert?

5 A. I did.

6 Q. And did you go with
7 someone?

8 A. Dante.

9 Q. Anyone else go with
10 you?

11 A. No.

12 Q. And how was it that you
13 came to be at the after party?

14 A. Dante had spoken to
15 someone in the Usher camp. I'm not
16 sure who. I never really asked. And
17 we went there and got to the VIP
18 section and got to meet him in person.

19 Q. So this concert that
20 you went to was in support of the
21 Confessions album?

22 A. It was whatever the
23 name of the tour was. Yeah, Usher
24 performed and after the show he had an

Page 310

1 after party.

2 Q. Did he perform Bad Girl
3 at the concert?

4 A. He did.

5 Q. How did that make you
6 feel?

7 A. At the time I felt
8 great about it because I was under the
9 impression that I was properly being
10 credited, and -- you know as a
11 producer and as a song writer, but had
12 I not -- I had known that I wasn't
13 going to be I wouldn't have been
14 excited about it.

15 Q. Well, at the time you
16 attended the concert you knew you had
17 not been credited and you were working
18 that out through Dante Barton?

19 MR. MALOFIY:

20 Objection.

21 THE WITNESS: I knew
22 from --

23 BY MR. DAVIS:

24 Q. Is that right?

Page 311

1 A. No.

2 Q. It is not right what I
3 said?

4 A. Maybe I misunderstood
5 you. Maybe you can rephrase it.

6 Q. I said at the time you
7 went to the concert?

8 A. Yeah.

9 Q. Which was after the
10 releases the Confessions album?

11 A. Yes.

12 Q. You had already knew
13 that you were not identified in the
14 writer credits?

15 A. In the writer credits
16 on the liner notes, right.

17 Q. Yes.

18 A. That's correct.

19 Q. But you went to the
20 concert and you were pretty happy he
21 was playing the song; is that right?

22 MR. MALOFIY:

23 Objection. He answered this
24 question already. My, God.

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1 THE WITNESS: I was
2 happy that he was playing my
3 song on stage and performing
4 my song because I was told
5 that these credits were all
6 being fixed and I was going to
7 be properly credited. Had I
8 known that that was not going
9 to happen it would have been a
10 completely different
11 situation.

12 BY MR. DAVIS:

13 Q. Well, in August 2004 by
14 that time the only person you had been
15 talking to was Dante Barton about it;
16 is that correct?

17 A. I don't recall.

18 Q. Okay.

19 A. I don't recall.

20 Q. You didn't run up on
21 the stage and tell Usher to stop
22 performing Bad Girl when he started to
23 play it, did you?

24 A. I think I would have

Page 313

1 gotten arrested.

2 Q. But you didn't do it,
3 did you?

4 MR. MALOFIY:

5 Objection.

6 THE WITNESS: I don't
7 do things like that to
8 jeopardize myself to go and
9 get put in jail.

10 BY MR. DAVIS:

11 Q. So the answer is, no,
12 you didn't do that?

13 A. The answer is I
14 wouldn't have done that, no.

15 Q. And you were proud that
16 he was singing a song that you were
17 apart of?

18 MR. MALOFIY:

19 Objection. You can answer.

20 THE WITNESS: Again, I
21 was proud --

22 MR. MALOFIY: Having
23 trouble.

24 THE WITNESS: -- but I

Page 314

1 was -- I was supposed to be
2 properly credited for this
3 song. If I knew I wasn't
4 being properly credited for
5 this song chances are I
6 wouldn't have gone to the
7 concert.

8 BY MR. DAVIS:

9 Q. How did it come to be
10 that you had an opportunity to meet
11 Usher at this party?

12 A. How did -- I told you.

13 Q. Well, I'm not saying
14 how you got to the party. Now I'm
15 asking you how is it that you got in
16 front of Usher at this after party?

17 A. Dante Barton had made a
18 phone call to someone in the camp. We
19 went to the after party. We got to
20 the VIP section. He said who we were
21 to the person at the front, and we
22 were the front at the VIP area. I
23 remember it being on a second floor of
24 some sort of like balcony area that

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1 overlooked the whole dance floor and
2 stuff. We went in there and they
3 said, you know, he is right over
4 there. We walked up to him and we
5 basically said, hey, how you doing,
6 I'm Dan Marino, this is Dante Barton,
7 we wrote and produced the song Club
8 Girl that you are using at Bad Girl.
9 He said great job. We shook hands.
10 It wasn't much more than a few minutes
11 of a conversation and that was it.

12 Q. That was it?

13 A. That was it.

14 Q. Okay.

15 A. But he did recognize it
16 and he said thank you, great job.

17 Q. And after that
18 August 2004 introduction to Usher and
19 the brief exchange that you had you
20 didn't meet Usher in person again
21 until his deposition in April of this
22 year?

23 A. That's correct. And
24 even at that time --

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1 Q. That is --

2 A. -- and even at that
3 time he didn't even dispute the fact
4 that I wrote the song or produced the
5 song or performed the song or
6 anything, even at that time. He just
7 recognized me as a producer and as a
8 song writer, and he said thank you.

9 Q. All I asked you was,
10 you didn't see him between August 2004
11 until April of 2013?

12 A. No, I did not.

13 Q. Okay. Did you ever try
14 to telephone Usher between 2004 and
15 2013?

16 A. Mr. David -- Davis?

17 Q. Davis is my name.

18 A. How would I possibly
19 call Usher on the telephone?

20 Q. I'm just asking you,
21 did you try to telephone him?

22 A. No. No, and had I
23 known that he was going to steal my
24 song I would have definitely tried to

Page 317

1 call him. I would have definitely
2 tried to reach lengths to get his
3 phone number or people that know him,
4 but I didn't know that at that time.

5 Q. You are telling me that
6 as of August 2004 you knew you still
7 had not been credited?

8 MR. MALOFIY:

9 Objection.

10 BY MR. DAVIS:

11 Q. So are you saying that
12 as the years went by and you still
13 were not credited you didn't feel any
14 urgency to try to contact Usher?

15 MR. MALOFIY: I got to
16 cut you off because you are
17 mischaracterizing his
18 testimony repeatedly. Not
19 just once, not just twice,
20 hours of testimony you are
21 mischaracterizing. You can't
22 do that. I'm not going to
23 allow it to happen. All
24 right. That is not what he

Page 318

1 said. He said it was a
2 mistake in the liner credits,
3 not that anyone did not
4 recognize him as a song
5 writer. Okay. You got to be
6 clear when you're asking
7 questions. What you are doing
8 is playing games.

9 BY MR. DAVIS:

10 Q. Mr. Marino --

11 MR. MALOFIY: I'm tired
12 of it. I'm tired of it.

13 Everybody is tired of it.

14 MR. DAVIS: Have you
15 finished, are you finished
16 with your speech?

17 MR. MALOFIY: Are you
18 finished with
19 mischaracterizing the man's
20 testimony and then trying to
21 play games with words because
22 you are a shrewd lawyer?

23 BY MR. DAVIS:

24 Q. Mr. Marino, at any time

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1 Q. Mr. Marino --

2 A. I don't understand the
3 question. Why would you even ask
4 that?

5 Q. Mr. Marino --

6 MR. MALOFIY: Let him
7 finish. Let him finish.

8 BY MR. DAVIS:

9 Q. I'm asking --

10 A. It doesn't even make
11 sense why you are asking me that.

12 Q. Did you ever attempt to
13 contact Usher between August of 2004
14 and April of 2013 when you saw him at
15 his deposition, it is a very simple
16 question?

17 A. I don't recall.

18 MR. MALOFIY:

19 Objection. Can you answer.

20 THE WITNESS: I don't
21 recall.

22 BY MR. DAVIS:

23 Q. Did you ever try to
24 text him during that period of time?

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1 between August of 2004 and April of
2 2013 did you ever try to telephone
3 Usher?

4 A. Look --

5 Q. I'm just asking you to
6 answer that question.

7 A. All I know is that I
8 wrote this song and that your
9 defendants stole it from me.

10 Q. I'll accept that as a
11 no, you didn't try to call him?

12 MR. MALOFIY:

13 Objection.

14 BY MR. DAVIS:

15 Q. Is that fair, the
16 answer is no, you didn't try to call
17 him?

18 A. Why would I try to call
19 him? Why? Why, when they already
20 assured me that they were fixing the
21 credits. His camp, your defendants
22 already told me that they were going
23 to take care of the credits, why would
24 I try to contact him?

Page 321

1 A. I don't recall.

2 Q. Did you ever try to
3 e-mail him between 2004 and 2013?

4 MR. MALOFIY: I mean,
5 it is a silly question you are
6 asking.

7 BY MR. DAVIS:

8 Q. Did you?

9 MR. MALOFIY: Childish.

10 THE WITNESS: Mr.
11 Davis, you are defending
12 thieves and you are acting
13 like somebody who should be
14 hanging out with them at that
15 point.

16 BY MR. DAVIS:

17 Q. Mr. Marino, I'm just
18 asking --

19 A. I don't have his e-mail
20 address.

21 Q. So the answer is you
22 didn't try to e-mail him?

23 A. No, I did not try to
24 e-mail Usher because I don't have his

Page 322

1 e-mail address.

2 Q. Did you ever tell Usher
3 between -- okay.

4 VIDEOGRAPHER: The time
5 is now 4:38 p.m., and this
6 ends DVD number two in the
7 deposition of Daniel Marino.

8 THE WITNESS: This is
9 so ridiculous.

10 ---
11 (At this time a short
12 break was taken.)

13 ---
14 VIDEOGRAPHER: The time
15 is now 4:48 p.m. This begins
16 DVD number three and the
17 deposition of Daniel Marino
18 and we are now on the record.

19 MR. DAVIS: Thank you.
20 BY MR. DAVIS:

21 Q. Mr. Marino, you had
22 testified earlier of the efforts that
23 you took to locate documents and you
24 mentioned that you looked on your

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1 computer, and it was a computer that
2 you had after being at the business
3 premises where your businesses were
4 operated from; is that correct?

5 A. Yes.

6 Q. When you went to the
7 computer to look for documents did you
8 have any e-mails that were stored on
9 that document -- on that computer?
10 Excuse me.

11 A. Can you please say that
12 again.

13 Q. Were there any e-mails
14 messages on the computer that you
15 searched that were stored on the
16 computer?

17 A. No.

18 Q. Did you ever e-mail Mr.
19 Barton?

20 A. We e-mailed often.

21 Q. Did you ever e-mail Mr.
22 Guice?

23 A. I don't think Guice and
24 I really e-mailed. I lot of texting

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1 going on.

2 Q. Texting?

3 A. Yeah.

4 Q. Did you ever look for
5 any of these text messages that you
6 had with Mr. Guice?

7 A. That was way back. I
8 mean that phone -- I don't have that
9 phone anymore.

10 Q. What about the e-mail
11 communications that you had with Mr.
12 Barton, did you search for those
13 e-mails?

14 A. I did do some searching
15 for e-mails.

16 Q. So you had some e-mails
17 from back in 2003, 2004?

18 A. No.

19 MR. MALOFIY:

20 Objection. You can answer.

21 THE WITNESS: No.

22 BY MR. DAVIS:

23 Q. You didn't have?

24 A. No, I did not have any.

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1 Q. From what period of
2 time did you have e-mails between
3 yourself and Mr. Barton?

4 A. I don't recall.

5 Q. Were there some?

6 A. There must have been.

7 Q. And did you look
8 through each e-mail to see whether or
9 not it was responsive to any of the
10 requests that were contained on the
11 document response served by the
12 defendants?

13 MR. MALOFIY:

14 Objection. You can answer.

15 THE WITNESS: I did
16 look and I didn't see anything
17 that was relevant.

18 BY MR. DAVIS:

19 Q. Did your lawyer assist
20 in the search of those documents with
21 you?

22 MR. MALOFIY: *

23 Objection. You don't have to
24 answer that.

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1 MR. DAVIS: Are you
2 instructing him not to answer?

3 MR. MALOFIY: Yup.

4 MR. DAVIS: Did you
5 turn over the records to you
6 to inspect?

7 MR. MALOFIY: All
8 right. You can ask me that in
9 a discovery request. That is
10 how it is done, but I'm not
11 being deposed right now, Mr.
12 Davis.

13 MR. DAVIS: Okay.
14 We'll ask you later.

15 MR. MALOFIY: You can
16 do it quick, because we have a
17 discovery deadline. I'll be
18 happy to write you a letter,
19 respond to a letter or e-mail
20 even. No issue there.

21 MR. DAVIS: Okay.

22 BY MR. DAVIS:

23 Q. In your search for
24 those document --

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1 MR. MALOFIY: I just
2 wanted to raise it.

3 MR. DAVIS: We are not
4 going to discuss it now.

5 MR. MALOFIY: We have
6 Barton on Tuesday.

7 BY MR. DAVIS:

8 Q. Mr. Malofiy did you
9 look through every e-mail that you
10 found -- Mr. Marino, did you look
11 through every e-mail that you had
12 between yourself and Mr. Barton on
13 your computer?

14 A. I did.

15 Q. You did?

16 A. Did I look you are
17 asking me?

18 Q. Yes.

19 A. Yes.

20 Q. And there were no
21 responsive documents in the emails
22 that you reviewed?

23 A. No.

24 Q. Okay. How did you come

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1 MR. MALOFIY: I don't
2 mean to interrupt.

3 MR. DAVIS: You're
4 instructing him, we'll discuss
5 that later.

6 MR. MALOFIY: We
7 probably should just all tee
8 off maybe at the end of the
9 deposition and kind of get an
10 understanding going forward
11 because we have Barton's
12 deposition on --

13 MR. DAVIS: Mr.
14 Malofiy, you are interrupting
15 the deposition.

16 MR. MALOFIY: We were
17 talking about discovery. You
18 asked me a question. I just
19 wanted to raise in issue that
20 we are having. I'm not trying
21 --

22 MR. DAVIS: We can
23 discuss that after the
24 deposition, Mr. Malofiy.

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1 to learn of Mark Pitts?

2 A. Originally through a
3 gentleman that would come through the
4 studio. I never really knew his real
5 name, but his nickname was General.

6 Q. What did General do?

7 A. I really don't know. I
8 think he was just somebody that
9 shopped music.

10 Q. How did you understand
11 that?

12 A. From the minimal
13 conversations we had.

14 Q. You spoke with General?

15 A. Yes.

16 Q. Okay. Did he shop any
17 of your music?

18 A. Yes.

19 Q. Did he shop music that
20 you had worked on with Mr. Barton and
21 Mr. Guice?

22 A. He had shopped music
23 that I had worked on with Barton and
24 Guice and my own.

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1 Q. Did you ever meet Mr.
2 Pitts in person?
3 A. Maybe.
4 Q. Why do you say maybe?
5 A. Because I believe I met
6 him in the studio once.
7 Q. He came to the
8 Philadelphia studio, Wavelab studio?
9 A. Yes, I believe he may
10 have.
11 Q. Do you remember when he
12 did that?
13 A. Prior to the release of
14 the Confessions album.
15 Q. Do you remember the
16 reason why you believe he may have
17 come to the studio?
18 A. To meet Dante and
19 myself.
20 Q. But you are not sure of
21 this happening?
22 A. I'm not sure, no.
23 Q. Would that be the only
24 time that you have any recollection of

Page 331

1 meeting him in person?
2 A. In person, yes.
3 Q. Okay. And that was
4 prior to the release of the
5 Confessions album?
6 A. Yes.
7 Q. You said General
8 shopped music. Did he shop Club Girl?
9 A. Yes.
10 Q. Did you know he was
11 shopping Club Girl?
12 A. No.
13 Q. What does shopping
14 mean?
15 A. To me it means he would
16 take my work or work that I worked on
17 with Will and Dante and try to find
18 other artists that would want to use
19 that song and song recording for their
20 album or single, like that.
21 Q. But in order to shop
22 your music he had to have a recording
23 of the music; is that correct?
24 A. Yes.

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1 Q. Okay. You call that a
2 demo?
3 A. Not necessarily.
4 MR. MALOFIY:
5 Objection. You can answer.
6 BY MR. DAVIS:
7 Q. What do they call it?
8 A. Music.
9 Q. Okay. So you say that
10 you didn't know that General was
11 shopping Club Girl?
12 A. That's correct.
13 Q. Did there come a time
14 when you did know that?
15 A. Yes.
16 Q. How did you find that
17 out?
18 A. When Usher received the
19 song that I originally wrote and
20 eventually wound up stealing it.
21 Q. When was that?
22 A. Again, it was obviously
23 prior to the release of the
24 Confessions album.

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1 Q. Were you upset that
2 General had shopped the Usher
3 recording of Club Girl to -- strike
4 that.
5 Were you upset when
6 you learned that General had been
7 shopping Club Girl to Usher?
8 A. I was not upset,
9 because I was supposed to get properly
10 credited for the song Club Girl and
11 any of the songs that he had in his
12 possession.
13 Q. So you were okay with
14 him shopping it subject to you getting
15 credit?
16 A. As long as I was
17 properly credited.
18 Q. Did you ever put
19 together a recording that included
20 Club Girl to be shopped with other
21 songs?
22 A. Can you please rephrase
23 that?
24 Q. Did you create a

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1 recording, a demo, I refer to it as,
2 that included Club Girl to be shopped
3 to third parties for potential use?

4 MR. MALOFIY:

5 Objection. You can answer.

6 THE WITNESS: Do you
7 mean a demo like a disk or
8 some sort of recording medium
9 where there would be multiple
10 songs on it?

11 BY MR. DAVIS:

12 Q. Yes.

13 A. Me personally?

14 Q. Yes.

15 A. No, I did not.

16 Q. Do you know if Mr.
17 Barton did that?

18 A. I don't know if Mr.
19 Barton did that. Could have also been
20 Wil.

21 Q. How did General get a
22 copy of Club Girl in order to present
23 it to Usher?

24 A. I don't know.

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1 Q. Do you know if General
2 directly provided it to Usher or to
3 someone that represented Usher?

4 A. To my understanding
5 General provided that demo, as you
6 call it, Club Girl, the song that I
7 wrote, to Mark Pitts.

8 Q. Okay. And how did you
9 learn that?

10 A. I'm trying to remember
11 exactly how I remember -- how I came
12 to know that. It had to be either one
13 of the two other people I worked with,
14 Dante or Wil.

15 Q. Did you ever speak to
16 Mark Pitts on the phone?

17 A. Yes.

18 Q. How many times?

19 A. I believe -- I can't
20 say a number, but during the time of
21 the revisions of the song I believe he
22 was on the phone multiple times.

23 Q. Before the revisions,
24 did you speak to him at all?

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1 A. If it was Mark Pitts
2 that was in the studio in Wavelab that
3 came down, then that time.

4 Q. Do you remember
5 anything about that possible time that
6 you met Mr. Pitts in your studio?

7 A. I remember being in the
8 back room, because there was two
9 different recording studios within
10 that location, and I just remember
11 listening to songs with him.

12 Q. You don't remember any
13 of the -- any conversation between
14 you?

15 A. The conversation was
16 like, oh, that is all right, let's
17 listen to the next song, oh, that one
18 is pretty good, that is hot, we might
19 be able to do something with that.
20 And we just listened to a bunch of
21 songs that I wrote along with, you
22 know, my partners.

23 Q. Anything else you want
24 to add to that?

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1 A. No, I don't recall the
2 in-depth conversation.

3 Q. Okay. Now you said you
4 had multiple, I think you used the
5 word, conversations during the
6 revisions period of Club Girl?

7 A. That's correct.

8 Q. When do you describe
9 the revisions period of Club Girl?

10 A. Sometime in '03. Maybe
11 towards the end of '03.

12 Q. Where were you during
13 the revisions period?

14 A. In my recording studio.

15 Q. In Philadelphia?

16 A. That's correct.

17 Q. Was -- where was Mark
18 Pitts?

19 A. That I don't know.

20 Q. And your testimony is
21 that you spoke to him during this
22 period?

23 A. It was a conversation
24 where he was in the studio, he, Mark

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1 Pitts was in the studio.
 2 Q. Not your studio?
 3 A. Not my studio. In
 4 another location on a speaker phone
 5 where they were playing the song that
 6 they were working on, my song Club
 7 Girl, and doing Bad Girl, and just
 8 getting ideas back and forth of what
 9 could possibly work because they were
 10 asking for, you know, a new hook, a
 11 possible bridge, which we worked on --
 12 I don't know how many different
 13 bridges we recorded and sent over to
 14 those guys, so -- yeah, during that
 15 time.
 16 Q. This is in late '03?
 17 A. I believe.
 18 Q. Okay. When you were
 19 doing any of this revision phase were
 20 you ever in the studio physically with
 21 Mr. Pitts?
 22 A. No.
 23 Q. Okay. Was the
 24 conversations that you had with Mr.

Page 339

1 Pitts at that time, the revision
 2 phase, only about what to do with the
 3 track?
 4 A. Yes.
 5 Q. Okay. And at some
 6 point there came a conclusion to what
 7 you call the revisions phase?
 8 A. Yes.
 9 Q. And was there changes
 10 made to Club Girl based upon the
 11 revisions phase?
 12 A. Yes, there was --
 13 MR. MALOFIY:
 14 Objection. You can answer.
 15 THE WITNESS: Yes,
 16 there were. There were -- I'm
 17 sorry, can you please repeat
 18 the question.
 19 BY MR. DAVIS:
 20 Q. There came a point in
 21 time when the revisions phase was over
 22 and that things that were done during
 23 the revisions phase were made part of
 24 Club Girl?

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1 MR. MALOFIY:
 2 Objection. You can answer.
 3 THE WITNESS:
 4 Obviously, yes, there was an
 5 end at some point.
 6 BY MR. DAVIS:
 7 Q. You were a participant
 8 in that?
 9 A. I was a participant in
 10 the revisions of the song, actually
 11 like things that, you know, went onto
 12 the final Bad Girl song.
 13 Q. You are saying you were
 14 a contributor to those changes?
 15 A. Absolutely.
 16 Q. And it was your
 17 judgment based upon their requests
 18 that this material should be included
 19 on the track?
 20 A. Yes.
 21 Q. Okay. And you approved
 22 of those changes in your own mind?
 23 MR. MALOFIY:
 24 Objection. You can answer.

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1 THE WITNESS: I mean, I
 2 don't know that I really
 3 approved of any of the
 4 changes.
 5 BY MR. DAVIS:
 6 Q. In your own mind, did
 7 you like the work that you had added
 8 to Club Girl?
 9 A. Some of it, yes, some
 10 of it, no.
 11 Q. But you were not
 12 opposed to including it as part of the
 13 work?
 14 A. The work that I did?
 15 MR. MALOFIY:
 16 Objection. You can answer.
 17 BY MR. DAVIS:
 18 Q. The additional material
 19 that was added to Club Girl?
 20 A. Can you please state --
 21 Q. I'm asking you --
 22 A. Yes.
 23 Q. -- you are saying that
 24 you created some new material during

Page 342

1 this revisions phase, and that this
2 was incorporated in the Club Girl
3 track?

4 A. It was incorporated
5 into the Bad Girl version of the
6 track.

7 Q. The Bad Girl version,
8 and you knew it was being
9 incorporated?

10 A. I played it, I recorded
11 it, I wrote it, yes.

12 Q. And you didn't object
13 to it being included?

14 A. I didn't object because
15 I thought that I was going to be
16 properly credited for it.

17 Q. I'm simply stating --

18 MR. MALOFIY: Let him
19 finish his answer. You keep
20 on cutting him short. It is
21 not fair. It is not fair.
22 You can't do that.

23 THE WITNESS: I did --
24 I did -- I was okay with

Page 343

1 making the revisions and
2 mailing them the disks.

3 BY MR. DAVIS:

4 Q. Oh, you mailed the
5 disks?

6 A. The final revisions --
7 let me finish, please. So we made
8 revisions to the Bad Girl. We made
9 many revision. I can't even tell you
10 how many. And because their request
11 was multiple or different verse --
12 excuse me, different chorus, they
13 wanted to change the chorus. We made
14 several different chorus changes to
15 the song and we mailed them those
16 changes, and some of those changes
17 they redid and it came up on the final
18 version of the Bad Girl track.

19 So, yes, I was okay
20 with giving them with the knowledge
21 knowing that I was going to be
22 properly credited for my contribution
23 to the song that I had already written
24 on my own.

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1 Q. You say that Mark Pitts
2 was on the speaker phone. Do you know
3 who else was with, if anyone, Mark
4 Pitts?

5 A. I can say with
6 certainty Mark Pitts, Terry Lewis and
7 Usher.

8 Q. And did this all happen
9 in one day or was it multiple days?

10 A. No, it was over an
11 extended period of time. If I had to
12 make a guess, couple weeks to a month
13 maybe.

14 Q. It was around-the-clock
15 work?

16 A. No.

17 Q. Sporadic?

18 A. It was not
19 around-the-clock work because I had a
20 day job, so I couldn't just be in the
21 studio around the clock, but a lot of
22 late nights.

23 Q. Did you send the new
24 files that you had created for the

Page 345

1 revisions phase to that studio where
2 Mark Pitts had been calling you from?

3 A. No, I did not mail
4 those disks.

5 Q. Who did?

6 A. Dante.

7 Q. You knew he was mailing
8 them to them?

9 A. Yes, again with the
10 understanding that I was going to be
11 properly credited for the song that I
12 originally wrote.

13 Q. I understand.

14 A. I was not expecting it
15 to be stolen from me at the end of
16 all this.

17 Q. Now, was someone
18 working with you in the studio when
19 you were doing this revisions phase?

20 A. Yes.

21 Q. Who was that?

22 A. Dante.

23 Q. Anyone else?

24 A. And Wil, I believe Wil

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1 may have been there or maybe -- I'm
2 not sure. Maybe Wil was there during
3 the daytime when I did my parts and
4 then he went in and did his part when
5 I was at work. I'm not quite sure.

6 Q. Now did you have any
7 conversation with -- I think you said
8 Terry Lewis was there?

9 A. Yes.

10 Q. Do you speak directly
11 with Terry at any point in time during
12 these conversations with Mark Pitts?

13 A. You are going to have
14 to start that over.

15 Q. Well, you said Mark
16 Pitts initiated these calls?

17 MR. MALOFIY:

18 Objection.

19 THE WITNESS: I don't
20 recall saying Mark Pitts
21 initiated the calls. I don't
22 recall saying that.

23 BY MR. DAVIS:

24 Q. Someone called you from

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1 One-on-one via the speaker
2 phone: Dan, that guitar is
3 fucking hot. That was pretty
4 much the gift of our
5 one-on-one.

6 BY MR. DAVIS:

7 Q. Okay.

8 A. They really loved the
9 guitar.

10 Q. Did he say anything
11 else to you that you can recall?

12 A. Not like a
13 word-for-word thing, but the gist was
14 like, try and get that same hot of the
15 guitar into the bridge.

16 Q. Did you have any
17 one-on-one conversations with Usher
18 while you were doing these revisions?

19 A. No.

20 Q. Did you have any
21 one-on-one conversations with Mark
22 Pitts that you haven't described
23 already?

24 A. I can't recall.

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1 the studio where they were and Mark
2 Pitts got on the phone?

3 A. Let me make it clear,
4 someone called -- I'm not sure if
5 Dante called or they called us, but we
6 spoke on the phone, again, generally
7 over the speaker phone so that we can
8 have discussion as a group, where they
9 were doing revisions, meaning Usher
10 and Terry Lewis and Mark Pitts.

11 Q. I thought you were
12 doing the revisions in Philadelphia?

13 A. That's correct.

14 Q. What were they doing at
15 the other studio?

16 A. Couldn't tell you,
17 possibly making their own revisions.
18 I wasn't there.

19 Q. Did you ever have any
20 one-on-one conversations with Terry
21 Lewis during this period?

22 MR. MALOFIY:

23 Objection. You can answer.

24 THE WITNESS:

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1 Q. Okay. And this
2 occurred over a multiple number of
3 evening or days?

4 A. I would say up to a
5 month.

6 Q. Was it every day during
7 a month?

8 A. Almost, not the
9 discussions on the telephone every
10 day, but the working in the studio on
11 my end.

12 Q. Okay.

13 A. Yes.

14 Q. During that one-month
15 period how many conversations can you
16 estimate that you had between your
17 studio and the studio that they were
18 at?

19 MR. MALOFIY:

20 Objection. You can answer.

21 THE WITNESS: Maybe
22 six, seven. I don't want it
23 to get confused with the
24 number of times I was in the

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1 studio over that month period
2 making the visions, but about
3 seven phone calls total over
4 that time.

5 BY MR. DAVIS:

6 Q. And it was all about
7 the music and lyrics, the discussion,
8 and bridge and the other components of
9 the song?

10 MR. MALOFIY:

11 Objection. You can answer, if
12 you understand his question.

13 THE WITNESS: Can you
14 please restate that?

15 BY MR. DAVIS:

16 Q. The substance of those
17 conversations concerned the changes
18 that were being affected on Club Girl?

19 MR. MALOFIY:

20 Objection. You can answer.

21 THE WITNESS: Club
22 Girl, Bad Girl, same song,
23 yes.

24 BY MR. DAVIS:

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1 Q. You knew where he
2 worked, though, did you not?

3 A. You know, I really
4 forget where he worked. I knew he was
5 working for a major label, but maybe
6 at the time I remembered, now I don't.

7 Q. But back then you think
8 you probably knew which label he was
9 at?

10 A. I could have found out.

11 Q. Okay. And you
12 testified that it was your
13 understanding that General was the one
14 who got a copy of Club Girl to Mr.
15 Pitts?

16 A. Yes.

17 Q. Okay. When you learned
18 that Mr. Pitts had a copy of Club Girl
19 and he had expressed interest in the
20 song did you ever attempt to dissuade
21 Mr. Pitts from using Club Girl?

22 A. Had I known that the
23 song was going to be stolen from me, I
24 would have. But I was not under the

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1 Q. Other than these, would
2 it be fair to say, conference calls
3 with one studio to the other --

4 MR. MALOFIY:

5 Objection.

6 BY MR. DAVIS:

7 Q. -- did you ever have a
8 conversation where only you and Mr.
9 Pitts were on the phone?

10 MR. MALOFIY:

11 Objection. You can answer.

12 THE WITNESS: I really
13 don't recall.

14 BY MR. DAVIS:

15 Q. Did you ever write to
16 Mr. Pitts at any time?

17 A. No.

18 Q. Did you ever e-mail Mr.
19 Pitts at any time?

20 A. No.

21 Q. Did you ever text Mr.
22 Pitts at any time?

23 A. I didn't have his phone
24 number.

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1 impression that that would ever happen
2 to me and that I would not be credited
3 properly.

4 Q. So the answer is, no,
5 you never tried to dissuade him from
6 using Club Girl?

7 A. That's correct.

8 Q. Thank you. You say in
9 your complaint that Mr. Pitts put the
10 deal together, those are your words in
11 the complaint --

12 MR. MALOFIY:

13 Objection.

14 BY MR. DAVIS:

15 Q. -- for Club Girl?

16 MR. MALOFIY: Where are
17 you referring to?

18 MR. DAVIS: Paragraph
19 307.

20 THE WITNESS: Can I see
21 that document, please?

22 BY MR. DAVIS:

23 Q. Sure.

24 A. What was the number

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1 again?
 2 Q. 307, paragraph 307.
 3 Very short paragraph.
 4 A. Okay.
 5 Q. Do you see that?
 6 A. Yes.
 7 Q. What do you -- tell me
 8 what you know from first-hand
 9 knowledge what Mr. Pitts did to put a
 10 deal together for Club Girl?
 11 A. From my knowledge my
 12 understanding was Mark Pitts being
 13 Usher's A and R had the ability to
 14 almost sway Usher into which songs he
 15 believes should go on the record, and
 16 it was my understanding that because
 17 of him doing so he would require a
 18 percentage of the song. That was my
 19 understanding.
 20 Q. Who would require a
 21 percentage?
 22 A. Mark Pitts.
 23 Q. What do you mean by a
 24 percentage?

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1 A. A slice of the pie, a
 2 partial, I guess, I don't want to say
 3 credit, but if he made the deal go
 4 through he was going to get, if I'm
 5 not mistaken, something like
 6 20 percent or something like that.
 7 Q. Well, Bad Girl did
 8 appear on Confessions. Do you have
 9 any information that Mr. Pitts got any
 10 percentage of Bad Girl?
 11 MR. MALOFIY:
 12 Objection. You can answer.
 13 THE WITNESS: You know,
 14 I don't think I ever really
 15 even looked into it. I just
 16 remember that as my
 17 recollection at the time of
 18 how he put the deal together.
 19 BY MR. DAVIS:
 20 Q. So the answer is, no,
 21 you don't have any information whether
 22 or not he got a percentage of Bad
 23 Girl?
 24 MR. MALOFIY:

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1 Objection. You can answer.
 2 THE WITNESS: I don't
 3 have any information.
 4 BY MR. DAVIS:
 5 Q. Did you have any
 6 conversations with Mr. Pitts in the
 7 ones that you have described already
 8 in which you discussed putting a deal
 9 together for Club Girl?
 10 A. You know, I think I
 11 answered this question earlier. I
 12 don't recall having one-on-one
 13 conversations with him.
 14 Q. Did you ever try to
 15 prevent Mr. Pitts from putting a deal
 16 together for Club Girl, which
 17 ultimately became Bad Girl?
 18 MR. MALOFIY:
 19 Objection.
 20 THE WITNESS: Had I
 21 known that the song was going
 22 to be stolen from me and I
 23 wasn't going to be properly
 24 credited I would have, but at

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1 the time, no, because I didn't
 2 think that that was going to
 3 happen.
 4 BY MR. DAVIS:
 5 Q. So the answer is, no,
 6 you didn't try to prevent Mr. Pitts
 7 from trying to put a deal together?
 8 MR. MALOFIY: No, that
 9 is not his answer.
 10 THE WITNESS: Yeah,
 11 that's not -- he's right, that
 12 is not what I said.
 13 BY MR. DAVIS:
 14 Q. Subject to your
 15 caveats?
 16 THE WITNESS: Can you
 17 please read back what I said
 18 as an answer, would you do
 19 that, please?
 20 - - -
 21 (At this time the court
 22 reporter read back from the
 23 record as was requested.)
 24 - - -

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1 THE WITNESS: That is
2 my answer. Thank you.
3 BY MR. DAVIS:
4 Q. Okay. So I'll ask you
5 again, subject to that caveat of
6 getting credit, you didn't try to
7 prevent Mr. Pitts from trying to put a
8 deal together for Club Girl?

9 MR. MALOFIY:
10 Objection. His answer is his
11 answer. It was read back, he
12 said it again. He said that
13 is his answer. You are using
14 the words caveat and this and
15 that and you are not being
16 straight.

17 THE WITNESS: Yeah, I
18 --

19 MR. DAVIS: Object to
20 your characterization.

21 MR. MALOFIY: This is
22 the truth. You don't like the
23 truth, we know that.

24 BY MR. DAVIS:

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1 Q. Is that accurate,
2 subject to your caveats, you didn't do
3 anything to prevent Mr. Pitts from
4 putting a deal together?

5 MR. MALOFIY:
6 Objection. His answer is his
7 answer. Do you want it read
8 back?

9 THE WITNESS: Mr.
10 Davis, can you please repeat
11 that question because I don't
12 quite understand what you mean
13 --

14 BY MR. DAVIS:

15 Q. Subject to --

16 A. Please didn't interrupt
17 me. I don't understand what you are
18 referring to when you are saying
19 subject to that caveat. Could you
20 please be a little bit more straight?

21 Q. Do you understand what
22 the word caveat means?

23 A. No.

24 Q. Okay. Subject to you

Page 360

1 getting credit, because you said that
2 in every answer that you've given me,
3 you didn't try to prevent Mr. Pitts
4 from putting a deal together for Club
5 Girl?

6 A. No.

7 Q. Thank you. Did you
8 ever attempt to dissuade Usher from
9 using Club Girl, which became Bad
10 Girl, on the Confessions album?

11 A. I believe I answered
12 this already.

13 Q. You might have.

14 A. Again, I'm going to say
15 the same thing that I continue to say,
16 had I known that this song was going
17 to be stolen from me, and that I was
18 not going to be properly credited as a
19 producer, as a song writer, as an
20 engineer, as a musician, I would have
21 not allowed any of this. I would have
22 never authorized any of this to
23 happen. And, again, to date, and it
24 will never happen, there has not been

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1 anyone ever to dispute that I
2 originally wrote the song, produced
3 the song and created the song on my
4 own.

5 Q. Are you saying now that
6 Mr. Guice and Mr. Barton didn't help
7 you with Club Girl?

8 A. I never said that.

9 MR. MALOFIY:
10 Objection.

11 BY MR. DAVIS:

12 Q. Well, you keep saying
13 you solely wrote, you solely owned.
14 Are you discounting what they did?

15 MR. MALOFIY:
16 Objection. This has been
17 asked and answered, but you
18 can answer it again.

19 THE WITNESS: Please
20 rephrase that question? Did I
21 discount?

22 BY MR. DAVIS:

23 Q. Did you want to change
24 your testimony about previously

Page 362

1 identifying them as being
2 collaborators with you on Club Girl?

3 A. I'll be clear, they
4 were people that I worked with.
5 However, originally I wrote that song
6 on my own without anyone else. I also
7 recorded that song on my own without
8 anyone else, and then people whom I
9 worked with, who are Dante Barton and
10 Wil Guice, added to my song,
11 collaborated after I created the song.

12 Q. Their collaboration --

13 A. Yes.

14 Q. -- was added to what
15 you had done to make a song?

16 MR. MALOFIY:

17 Objection. That is not what
18 he said. He said the song was
19 done. You are playing games
20 now. Cut it out. This is the
21 stuff that bothers me that
22 drives someone up the wall. I
23 never seen any lawyer do this
24 so bad ever. He just said it.

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1 MR. DAVIS: Mr.
2 Malofiy, I will ask you to
3 stop denigrating me during the
4 course of this deposition.

5 MR. MALOFIY:

6 Objection.

7 MR. DAVIS: You have
8 been doing it throughout, I
9 ask you again that you stop
10 doing it.

11 MR. MALOFIY: Mr.
12 Davis, you are asking the man
13 the same questions over and
14 over and trying to trick him.
15 After he says something you
16 mischaracterize his testimony,
17 you assume facts not in
18 evidence and then you ask him
19 questions related to that
20 after he just told you his
21 testimony. All right. That
22 is not fair, and I'm going to
23 call you out on it.

24 MR. DAVIS: Okay.

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1 BY MR. DAVIS:

2 Q. You've told me that you
3 had the conversations with Mr. Pitts
4 when he was in the studio and you were
5 in your studio, and you told me that
6 perhaps you may have met him ones at
7 the Wavelab studios in Philadelphia,
8 correct?

9 A. Correct.

10 Q. Did you -- is it true
11 that you never told Mr. Pitts that you
12 were excluded as a co-writer or
13 co-producer of Bad Girl?

14 A. Dante Barton told me
15 that he had spoke to Mark Pitts and
16 expressed that to him that that had
17 happened, that there was an improper
18 credit in the liner notes. Mark Pitts
19 told Dante that they were going to
20 take care of it, meaning his team and
21 Usher's team. So did I directly tell
22 him or hear from him, no.

23 Q. Okay. And the only way
24 that you have any understanding that

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1 that conversation between Mr. Pitts
2 and Mr. Barton took place is because
3 Mr. Barton told you?

4 A. That particular
5 conversation -- that particular
6 conversation Dante told me.

7 Q. Did you ever have any
8 conversation by telephone, e-mail or
9 text with a man named Wayne Barrow?

10 A. I couldn't say. I
11 don't recognize the name.

12 Q. Did you ever
13 communicate by any means with anyone
14 at Bystorm Entertainment?

15 A. Not that I can recall.
16 It was a long time ago.

17 Q. Did you ever notify
18 anyone directly at Arista, LaFace,
19 BMG, or Sony that you had not been
20 credited as a co-writer, or
21 co-producer, or engineer or any of the
22 other credits that you think you were
23 denied at any time?

24 MR. MALOFIY:

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1 Objection. Just to be clear,
2 you are talking about before
3 the lawsuit?

4 MR. DAVIS: Yes.

5 MR. MALOFIY: Just to
6 be clear.

7 THE WITNESS: Can you
8 name those entities again?

9 BY MR. DAVIS:

10 Q. Sure, I'll be happy to.
11 Did you ever notify anyone at Arista,
12 LaFace, BMG or Sony that you had not
13 received proper credit on the Bad Girl
14 track that was on the Confessions
15 album?

16 MR. MALOFIY:

17 Objection. You can answer.

18 THE WITNESS: Which
19 company did Mark Pitts work
20 for?

21 BY MR. DAVIS:

22 Q. Well, these companies
23 name changed over the course of time.
24 So he at one time was at Arista, then

Page 367

1 LaFace, BMG, Sony. They all can be
2 viewed as Usher's label.

3 A. So the only direct
4 communication I had with those
5 companies would have been -- and I
6 don't know if Jam and Lewis were with
7 those companies.

8 Q. No.

9 A. So it would have been
10 Mark Pitts who would have.

11 Q. I didn't ask you -- I
12 asked you did you ever have any
13 conversation with anyone at those
14 companies to tell them that you had
15 not been properly credited on the Bad
16 Girl track that appeared on the
17 Confessions album?

18 A. Dante told me that he
19 contacted them and that they were
20 aware of it, and they told him that
21 they were going to fix it and he
22 relayed that information to me.

23 Q. But you didn't have
24 that conversation with any one at

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1 those companies?

2 A. I didn't deal with the
3 business affairs, Dante did.

4 Q. And whatever you know
5 about any contact with those entities
6 was through Dante Barton?

7 A. The contact I had,
8 other than the cell phone calls for
9 the revisions and stuff like that.

10 MR. MALOFIY:

11 Objection.

12 BY MR. DAVIS:

13 Q. Right. I'm not talking
14 about revisions. I'm simply talking
15 about any call that you directly had
16 with those companies to advise them
17 that you had not been properly
18 credited on the Bad Girl track on the
19 Confessions album?

20 A. You know, had I known
21 that there were going to be dishonest
22 people on the other end and people
23 that were untrustworthy I would have
24 made those calls, but because I didn't

Page 369

1 know and because my business partner
2 was taking care of those deals I never
3 felt the need to call that record
4 myself.

5 Can I ask you a quick
6 question?

7 Q. You can ask your
8 lawyer?

9 THE WITNESS: How much
10 time do we have left in the
11 deposition?

12 MR. MALOFIY: I don't
13 know.

14 MR. DAVIS: We have a
15 lot of time.

16 THE WITNESS: I'm just
17 curious.

18 MR. MALOFIY: I think
19 it's probably about
20 45 minutes.

21 MR. DAVIS: We have
22 another two-and-a-half hours.

23 MR. MALOFIY: When did
24 we start?

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1 BY MR. DAVIS:

2 Q. Okay. You ready?

3 A. Absolutely.

4 MR. MALOFIY: We
5 started at 11:00.

6 BY MR. DAVIS:

7 Q. Your affidavit, which
8 is Marino-9 --

9 MR. MALOFIY: Just, I'm
10 not going to rush you for
11 time. I want to let you know.

12 MR. DAVIS: I beg of
13 you to stop interrupting me
14 while I am in the middle of
15 the question. You have done
16 that --

17 MR. MALOFIY: You know,
18 there is something called
19 professional courtesy. I'm
20 trying to let you know that
21 I'm not trying to crimp your
22 questions and I'm not trying
23 to rush you on time so you
24 done feel the need to --

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1 MR. DAVIS: You are
2 eating up my time, Mr.
3 Malofiy. I have seven hours.

4 MR. MALOFIY: I had two
5 hours with Usher, so deal with
6 it. Okay.

7 BY MR. DAVIS:

8 Q. Your affidavit, which
9 is now before you, said that you met
10 the Avila brothers at the Grammys in
11 2000 -- February of 2005. Do you see
12 that in there?

13 A. Yeah.

14 Q. Had you ever met either
15 Bobby or Izzy Avila before the 2005
16 Grammys in person?

17 A. No.

18 Q. Had you ever spoken to
19 them by phone prior to the 2005
20 Grammys?

21 A. I don't recall speaking
22 to them directly, but I believe they
23 may have been on the other line during
24 the course of the revisions while we

Page 372

1 were talking.

2 Q. So you don't recall any
3 conversation between you and either
4 one of them?

5 MR. MALOFIY:
6 Objection.

7 THE WITNESS: No.

8 MR. MALOFIY: That is
9 not what he said.

10 BY MR. DAVIS:

11 Q. Did you have occasion
12 to meet either Izzy or Bobby Avila
13 after the February 2005 Grammys?

14 A. Yes.

15 Q. Where did you meet
16 them?

17 A. At the depositions in
18 Los Angeles a couple weeks ago.

19 Q. So between February of
20 2005 and the depositions in April this
21 year you had no contact with either of
22 them?

23 A. No, I don't think so.

24 Q. Did you exchange any

Page 373

1 e-mails with either Izzy or Bobby
2 Avila between February 2005 and when
3 you saw them at the depositions last
4 month in Los Angeles?

5 A. I don't think so.

6 Q. Did you have occasion
7 to exchange any text between either
8 Izzy or Bobby Avila and yourself
9 between February 2005 and when you saw
10 them at the depositions last month?

11 MR. MALOFIY: I'm just
12 going to object. You can ask
13 him this question. The more
14 appropriate question would be
15 did you have his number, did
16 you have his e-mail.

17 THE WITNESS: No.

18 BY MR. DAVIS:

19 Q. Thank you. So the only
20 occasion that you had to meet either
21 of the Avila brothers was in
22 February 2005 at the Grammys and at
23 their deposition?

24 A. Correct.

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1 Q. Okay. Did you ever
2 attempt to notify Izzy or Bobby Avila
3 that you objected to the inclusion of
4 Bad Girl on the Confessions album?

5 MR. MALOFIY:

6 Objection. You can answer.

7 THE WITNESS: Can you
8 please.

9 MR. DAVIS: Please
10 repeat the question, madam
11 reporter.

12 - - -

13 (At this time the court
14 reporter read back from the
15 record as was requested.)

16 - - -

17 THE WITNESS: Did I
18 contact them that I object?

19 BY MR. DAVIS:

20 Q. Yes.

21 MR. MALOFIY:

22 Objection. You can answer.

23 THE WITNESS: I don't
24 recall contacting them to

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1 object. Like I said in my
2 affidavit, we briefly met and
3 it came on topic that I hadn't
4 been properly credited. And
5 they said, you are with good
6 people, basically, I think
7 that is -- and I trust people.
8 I trust people, I trust their
9 word so.

10 BY MR. DAVIS:

11 Q. What you stated in
12 paragraph six is what you recall them
13 saying to you?

14 A. Let me read paragraph
15 six.

16 What was the question
17 again, Mr. Davis?

18 Q. Is that what you recall
19 having said between you and the Avilas
20 on February 2005 at the Grammys?

21 A. Yes.

22 Q. Thank you. Have you
23 ever met in person Terry Lewis or
24 James Harris?

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1 A. Prior to the
2 depositions, no.

3 Q. And prior to the
4 depositions had you ever spoken
5 directly with James Harris?

6 MR. MALOFIY:

7 Objection. You can answer.

8 THE WITNESS: You know,
9 at the time I thought Jimmy
10 Jam and Terry Lewis were both
11 on the other line when we were
12 doing those revisions, but
13 during the deposition a couple
14 weeks ago in Los Angeles I
15 found out that -- Samuel
16 Harris, is his name -- is that
17 his name?

18 BY MR. DAVIS:

19 Q. That is what the
20 complaint says.

21 A. Okay. He testified to
22 not doing anything to the song,
23 however somehow he was credited as a
24 song writer and a producer on my song,

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1 which is beyond me how that happens,
2 and so I can't say that I have ever
3 had direct communications with him.

4 Q. Okay. Now, you
5 testified a few moments ago about the
6 conversations that you had during the
7 revision phase of Club Girl, which
8 became Bad Girl, and that Terry Lewis
9 was one of the persons that was part
10 of those calls; is that correct?

11 A. Uh-huh.

12 Q. Okay. Did you have any
13 direct communications with Terry Lewis
14 during those conference calls?

15 A. Direct?

16 Q. Where you spoke to him?

17 A. Yes, on the telephone.

18 Q. And what did you speak
19 about with Terry Lewis on the
20 telephone?

21 A. The music, the
22 revisions, what needs to get done, you
23 know, about having something hook in
24 the bridge as it did in the rest of

Page 378

1 the song to keep that momentum, that
2 feel, that life in the song.

3 Q. Do you recall
4 discussing anything else with him?

5 A. It was strictly in
6 regards to the music.

7 Q. Okay. Did you ever
8 have a conversation with Mr. Lewis on
9 the telephone after the revisions
10 phase?

11 A. Not that I can recall.

12 Q. Did you ever e-mail Mr.
13 Lewis or Mr. Harris?

14 MR. MALOFIY:

15 Objection. You can ask these
16 questions, but.

17 THE WITNESS: Had I
18 known that my song was going
19 to be stolen from me and I
20 wasn't going to be properly
21 credited I would have
22 absolutely credited everyone,
23 everyone, but I did not.

24 BY MR. DAVIS:

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1 Q. Okay. Did you ever
2 write to either Terry Lewis or Jimmy
3 -- James Harris after the revision
4 phase of the song Club Girl, which
5 became Bad Girl?

6 A. If I knew the song was
7 going to be stolen from me then I
8 would have, but I trusted people's,
9 you know, just character and judgment
10 that they would be honest individuals,
11 so I did not.

12 Q. Okay. Did you ever
13 notify Mr. Lewis or Mr. Harris that
14 you didn't want Bad Girl to be
15 commercially exploited on the
16 Confessions album?

17 A. That is going to be the
18 same answer as prior. I wouldn't have
19 authorized anything had I known that
20 my song was going to be stolen and I
21 wasn't going to be properly credited
22 as a song writer, producer, engineer.
23 So I would have contacted them had I
24 known that the dishonesty was going to

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1 come into play.

2 Q. What is your answer?

3 A. I did not contact them
4 because I thought they were going to
5 be honest people.

6 Q. Did you ever discuss
7 with Terry Lewis at any time anything
8 about the credits to Club Girl, which
9 became Bad Girl?

10 A. Dante Barton was again
11 the person who dealt with the business
12 affairs and that would have been a
13 business affair. So again, it just
14 goes down to the same answer as the
15 prior answer, I would have contacted
16 him had I known there was going to be
17 -- had I known I was going to be
18 dealing with dishonest people.

19 Q. So the answer is, no,
20 you didn't contact Mr. Lewis?

21 MR. MALOFIY:

22 Objection, he answered.

23 THE WITNESS: I did not
24 contact Mr. Lewis because I

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1 thought he was an honest
2 individual.

3 BY MR. DAVIS:

4 Q. Did you ever contact
5 the Avilas after the meeting -- the
6 time you met them at Grammys in
7 February of 2005 to tell them you had
8 not been credited on the Confessions
9 album?

10 A. Same answer. If I knew
11 that I was dealing with organizations
12 that had people within that
13 organization who were dishonest and
14 that weren't going to the steel my
15 song I would have contacted them, but
16 I did not.

17 Q. Did you ever attempt to
18 contact anyone at EMI to notify them
19 that you had not been credited on the
20 Bad Girl track on the Confessions
21 album?

22 MR. MALOFIY:

23 Objection. Can you answer.

24 THE WITNESS: Which

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1 company?

2 BY MR. DAVIS:

3 Q. EMI?

4 A. As far as I know Dante
5 contacted all the corporate entities
6 to make sure that my credit was going
7 to be fixed, and that he communicated
8 to me that the powers that be were
9 going to take care of it.

10 Q. So you relied on what
11 Dante told you about what he had done?

12 A. My business partner.

13 Q. You don't know
14 firsthand whether or not Dante did
15 what he told you in terms of
16 contacting any of these people to
17 raise the issue about whether or not
18 they were going to fix the credits to
19 reflect you as a co-writer,
20 co-producer, or engineer or any of the
21 other credits that you believe you
22 were entitled to receive?

23 MR. MALOFIY:

24 Objection.

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1 BY MR. DAVIS:

2 Q. Is that true?

3 MR. MALOFIY:

4 Objection.

5 THE WITNESS: No, it is
6 not true.

7 MR. MALOFIY: You can
8 answer.

9 THE WITNESS: No, that
10 is not true.

11 BY MR. DAVIS:

12 Q. It is not true?

13 A. No, it is not true.

14 Dante spoke to people directly, and
15 what happened was apparently there was
16 problems with the credits, not just
17 mine, other people's credits. And he
18 had shown me documentation that there
19 was money tied up and there was
20 discrepancies in production rates and
21 song writing credits or one or the
22 other or both, and that things were
23 being worked out, and as soon as that
24 was going to be worked out then I was

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1 going to be properly credited.

2 Q. Did he show you
3 anything that he had received from any
4 of these individuals, Usher, Mark
5 Pitts, the Avila brothers, Terry
6 Lewis, James Harris, EMI,
7 Warner-Tamerlane, or Sony, that
8 addressed the issue of you not getting
9 credit on Bad Girl?

10 MR. MALOFIY:

11 Objection. You can answer.

12 THE WITNESS: I believe
13 he did. I believe he did.

14 BY MR. DAVIS:

15 Q. What did he show you?

16 A. He showed me all the
17 discrepancies that were going on and
18 once they would get fixed then my
19 credit would get fixed.

20 Q. What discrepancies did
21 he show you in terms of a document or
22 letter from any of these individuals?

23 A. Document.

24 Q. What document?

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1 A. I'm not quite sure. I
2 believe it is in here.

3 Q. Are you referring to
4 the invoice from Wallace Collins?

5 MR. MALOFIY:

6 Objection.

7 THE WITNESS: I don't
8 recall off the top of my head.
9 There are so many documents,
10 but I believe there is a
11 document in there.

12 BY MR. DAVIS:

13 Q. We'll find out.

14 A. Yeah.

15 MR. DAVIS: What are we
16 up to?

17 MR. MALOFIY: I believe
18 we are up to 11.

19 MR. DAVIS: I'm marking
20 as Marino-11 a one-page
21 document on the letterhead of
22 Wallace Collins dated
23 November 22nd, 2005.

24 - - -

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(At this time a document was marked for identification as Exhibit No. Marino-11.)

- - -

MR. MALOFIY: Could I see that just to make sure it is the same one?

MR. DAVIS: I'm sorry.

MR. MALOFIY: This is what was attached to the complaint, correct?

MR. DAVIS: I got this document from you, Mr. Malofiy, Bates stamp 00010.

MR. MALOFIY: Plaintiff's production. Right. It was on the complaint.

THE WITNESS: I believe there is another document.

BY MR. DAVIS:

Q. What document?

A. Another document that

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another document somewhere.

Would it not be --

BY MR. DAVIS:

Q. Well, these are the documents that were attached to the complaint, and of your production.

MR. MALOFIY: I have a -- I don't mean to interrupt, but -- this can be off the record.

MR. DAVIS: Nothing is off the record. We are still on the camera and we are in the middle of a question.

MR. MALOFIY: Go ahead.

THE WITNESS: I believe --

MR. MALOFIY: It was an emergency.

THE WITNESS: I believe there's -- I believe there is another document. If it is not here I'll do my best to find it, but I believe there

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talks about the matter going on -- ongoing negotiations with legal counsel, I believe there is more.

MR. MALOFIY: Would you like to hand him the complaint?

BY MR. DAVIS:

Q. You think it is part of the complaint?

A. I believe -- I think I may have the complaint. It may be in here. This is one of them for sure.

Q. Show me the other one. I would be happy to look at it?

A. Sure. Would they all be in the back?

MR. MALOFIY: Yeah, the exhibit are attached to the back of the complaint.

MR. DAVIS: The exhibit are attach to the back of the complaint.

THE WITNESS: Thank you. I believe there is

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is another document.

BY MR. DAVIS:

Q. What do you believe that document says and who is it from?

A. I don't recall, I mean, who it is from, but I believe there was a document in regards to credits. You had asked me earlier a question --

Q. I had -- go ahead. I'm sorry.

A. -- if I'm not mistaken, if there was any type of documentation from someone within a handful of companies that you had mentioned and I couldn't tell you which company, that there was something about credits being fixed.

Q. Credits being fixed?

A. That is what you had asked, correct?

Q. If you find that document just advise your counsel and your counsel will supply me with that document.

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1 MR. MALOFIY: We will
2 be happy to respond to that.
3 Just shoot over a quick
4 e-mail.

5 THE WITNESS: I do
6 believe there is something
7 somewhere.

8 BY MR. DAVIS:

9 Q. When did you see the
10 document?

11 A. I believe I saw these
12 documents at some point when I was
13 having discussions with Dante and I
14 asked him to, you know, show me some
15 proof. This is one of the documents.

16 Q. I think I know what you
17 are referring to.

18 MR. MALOFIY: Now that
19 the question is not pending
20 there is an emergency. Your
21 wife -- because you want to
22 keep this on the record, okay,
23 she is locked out and she
24 thinks your deposition is

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1 going in my office at the
2 Beasley Firm, and she needs
3 someone to run her out keys.

4 THE WITNESS: Can you
5 text her to come here?

6 MR. MALOFIY: That is
7 what I would like to do. This
8 is on the record.

9 THE WITNESS: That is
10 fine, it is on the record.
11 Whatever. Do you mind telling
12 her to come by?

13 MR. MALOFIY: 2000
14 Market Street.

15 THE WITNESS: Yeah,
16 just tell her to come to the
17 20th floor and I'll give it to
18 her.

19 MR. MALOFIY: 2000
20 Marked Street. Someone will
21 -- do you want to take a
22 break?

23 THE WITNESS: Not yet.
24 Not yet. Not yet.

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1 BY MR. DAVIS:

2 Q. Is this the document
3 you are referring to? It has writing
4 on the top.

5 A. No. No. No. This is
6 something else. This is a document
7 that, if I'm not mistaken, I believe
8 came from one of the entities that you
9 described.

10 Q. And is that a document
11 you produced in this case?

12 A. I think I did.

13 Q. Okay. So you have it,
14 you'll -- why don't we take a break
15 and see -- deal with that issue and
16 then see --

17 MR. MALOFIY: We can go
18 for a little while. She is
19 not going to be here --

20 THE WITNESS: Yeah,
21 that is what I was going to
22 say. It is going to her ten
23 minutes to get here.

24 MR. MALOFIY: Keep

Page 393

1 moving on.

2 THE WITNESS: Sorry
3 about that.

4 MR. MALOFIY: I'll
5 speak to -- just for the
6 record, I'll speak to my
7 client tonight, if there is
8 something I'll be happy to
9 provide it to you gentlemen.

10 MR. DAVIS: If you
11 produced it, it is in that.

12 MR. MALOFIY: Yeah,
13 just for the record,
14 everything I have, you have.

15 BY MR. DAVIS:

16 Q. Did you ever ask Wil
17 Guice if he received any money for Bad
18 Girl?

19 A. I don't recall asking
20 him, no.

21 Q. Is there any reason you
22 didn't ask him?

23 A. He wasn't around.

24 Q. Well, he was from the

Page 394

1 period of time when the album was
2 released in March of 2004, and
3 according to your complaint, sometime
4 in the fall of 2004 he moved out of
5 the Philadelphia area?

6 A. That's correct.

7 Q. All right. So during
8 that period of time it never occurred
9 to you to ask Mr. Guice if he had
10 received any money on Bad Girl?

11 A. No, and I don't recall
12 asking him. NO.

13 Q. Did you ask Mr. Barton
14 if he had receive any money during
15 that period of time when Guice was
16 still around?

17 A. Possibly.

18 Q. Did Mr. Barton tell you
19 that he had received a \$15,000 advance
20 on Bad Girl?

21 A. No, not that I recall.

22 Q. But he -- I'm sorry.

23 A. I'm just trying to
24 think. It was a while ago. I can't

Page 395

1 -- I don't recall.

2 Q. But he did tell you he
3 was working to fix the credit issue
4 for you?

5 A. He told me that the
6 Usher camp and corporate was working
7 on fixing it.

8 Q. But he was the one who
9 told you that?

10 A. He was the one that was
11 told that, that communicated that to
12 me.

13 Q. And you are relaying on
14 what Mr. Barton told you?

15 A. My business partner and
16 good friend, yes.

17 MR. MALOFIY:

18 Objection, but go ahead.

19 BY MR. DAVIS:

20 Q. But you weren't privy
21 to any conversation that Mr. Barton
22 may have had with any of these
23 corporate people that you are
24 referring to?

Page 396

1 A. Say that again.

2 Q. You were not present
3 during any of these conversations that
4 Mr. Barton says he was having with the
5 corporate people?

6 MR. MALOFIY:

7 Objection. You can answer.

8 THE WITNESS: I believe
9 I was. I believe I was around
10 while he was on the telephone
11 with them.

12 BY MR. DAVIS:

13 Q. Were you on the
14 telephone?

15 A. No.

16 Q. Okay. You know that
17 Mr. Barton was lying to you, don't
18 you?

19 MR. MALOFIY:

20 Objection.

21 BY MR. DAVIS:

22 Q. About fixing the
23 credits and getting you paid?

24 MR. MALOFIY:

Page 397

1 Objection.

2 THE WITNESS: I can't
3 say for certain.

4 BY MR. DAVIS:

5 Q. Well, you can't?

6 A. That he was lying to
7 me?

8 Q. Yes.

9 A. No.

10 Q. Well, did he after he
11 disappeared in 2009 ever come clean
12 and tell you that he had been paid
13 money for the exploitation of Bad Girl
14 and say here is your share?

15 MR. MALOFIY:

16 Objection.

17 THE WITNESS: I
18 think --

19 MR. MALOFIY: You can
20 answer.

21 THE WITNESS: If you
22 could just be clear what time
23 frame you are speaking of.

24 BY MR. DAVIS:

Page 398

1 Q. I'm talking about after
2 2009.

3 A. After 2009?

4 Q. Yes.

5 A. Can you rephrase the
6 question again.

7 MR. DAVIS: Could you
8 read it back.

9 - - -

10 (At this time the court
11 reporter read back from the
12 record as was requested.)

13 - - -

14 THE WITNESS: I
15 misunderstood that. No, I
16 haven't had any communications
17 with Dante.

18 BY MR. DAVIS:

19 Q. You know that Mr.
20 Barton was lying to you for years,
21 don't you?

22 MR. MALOFIY:
23 Objection. You can answer.

24 THE WITNESS: I don't

Page 400

1 MR. MALOFIY:

2 Objection. That is not what
3 he said.

4 THE WITNESS: I had
5 conversations --

6 MR. MALOFIY: That is
7 not what he said repeatedly
8 and it is getting tiring now
9 again.

10 THE WITNESS: I have
11 had conversations with other
12 people as well.

13 BY MR. DAVIS:

14 Q. What other people?

15 A. I have had other
16 conversations with other people.

17 Q. What people?

18 A. Tommy Van Dell.

19 Q. Okay. Tell me the
20 conversations you had with Tommy Van
21 Dell?

22 MR. MALOFIY: All
23 right. I'm just going to go
24 -- perhaps you forgot the

Page 399

1 know for sure if he was lying
2 for years. It is possible he
3 wasn't and then something else
4 happened. I really don't know
5 what the truth is. I have
6 been dealing with a bunch of
7 people that have been lying to
8 me, so from your end all the
9 defendants on your end to
10 Dante.

11 All I know is that I
12 wrote the song and people
13 stole it from me and I have
14 not been properly credited for
15 it to date. I wrote the song,
16 I produced the song on my own.
17 There hasn't been anyone to
18 dispute it, and there won't be
19 anyone. I promise you there
20 will be no one to dispute that
21 I originally wrote that song.

22 BY MR. DAVIS:

23 Q. The only conversations
24 you had were with Mr. Barton, though?

Page 401

1 first two hours of his
2 testimony. Didn't we go
3 through this at length?

4 MR. DAVIS: Mr.
5 Malofiy, this is becoming
6 vexatious and deplorable --

7 MR. MALOFIY: You are
8 right. You are absolutely --

9 MR. DAVIS: -- that you
10 are continuing to interrupt my
11 deposition.

12 MR. MALOFIY: You are
13 absolutely right, this is
14 becoming vexatious and it is
15 almost overbearing because
16 what is happening here is you
17 ask the question 30 times,
18 then you ask it another 30
19 times, then you wait two hours
20 and you go back and ask it 30
21 times. It is the same answer
22 over, and over, and over, and
23 over again.

24 I want to be

Page 402

1 abundantly fair. I would have
2 shut this deposition down,
3 said next question and walked
4 out, but I haven't done that
5 because I want to be sure I'm
6 being fair with you and all
7 the parties here to get what
8 you want or what you think you
9 need because we have a
10 discovery deadline coming up
11 on the eighth, but if we
12 didn't have that I would have
13 shut this down a long time
14 ago.

15 MR. DAVIS: You are
16 eating up my time, sir.

17 MR. MALOFIY: I'm not
18 going to push you for time.

19 BY MR. DAVIS:

20 Q. Mr. Marino --

21 MR. MALOFIY: I want
22 you to get all the questions
23 you want. I just want you to
24 be fair with this man, and if

Page 403

1 he answers the question 50
2 times, it is the same answer.
3 You are trying to get a piece
4 of the transcript to show
5 something different.

6 BY MR. DAVIS:

7 Q. Mr. Van Dell -- Mr.
8 Marino, tell me about the
9 conversations that you had with Mr.
10 Van Dell that you are now referring
11 to?

12 A. I need to -- you need
13 to refresh me on --

14 Q. You said that you spoke
15 with other people and you identified
16 Mr. Van Dell?

17 A. Yes.

18 Q. I want to know what
19 those conversations were with Mr. Van
20 Dell?

21 A. I would like for you to
22 remind me where we were going with
23 these questions.

24 Q. I asked you -- I asked

Page 404

1 you whether or not anyone other than
2 Dante Barton did you speak to about
3 the credit issue, and you said other
4 people?

5 A. Yes.

6 Q. And I asked you what
7 other people, and in response you said
8 Mr. Van Dell.

9 A. Right, as one of them.

10 Q. What conversations did
11 you have with Mr. Van Dell about
12 credits?

13 A. Van Dell assured me in
14 the studio that he would fix the
15 credits.

16 Q. When was that
17 conversation?

18 MR. MALOFIY:

19 Objection. Asked and
20 answered, but just keep on
21 going and asking and
22 answering.

23 THE WITNESS: I'm not
24 sure exactly when, but it was

Page 405

1 in Wavelab studio after the
2 record came out during the
3 time of the disputes that we
4 had these documents out
5 earlier. I cannot give you an
6 exact date. I don't remember
7 an exact date.

8 BY MR. DAVIS:

9 Q. Can you tell me what
10 year it was?

11 MR. MALOFIY:

12 Objection.

13 THE WITNESS: I would
14 be -- I can't tell you an
15 exact year.

16 BY MR. DAVIS:

17 Q. You said it was at
18 Wavelab studios?

19 A. That was one of the
20 conversations.

21 Q. Where else did you have
22 a conversation?

23 A. On the airplane coming
24 back from Nashville.

Page 406

1 Q. Well, that was before
2 Confessions was released, wasn't it?
3 A. That is correct.
4 Q. So you couldn't have
5 talked about credits about Bad Girl on
6 that trip?
7 MR. MALOFIY:
8 Objection.
9 THE WITNESS: Yes.
10 BY MR. DAVIS:
11 Q. So other than the
12 conversation you just testified about
13 at Wavelab, a date of which you don't
14 recall, what other conversations, if
15 any, did you have with Mr. Van Dell
16 about the credit issues?
17 MR. MALOFIY:
18 Objection, credit issue. He
19 could have talked about
20 credits back in the plane, so
21 you are trying to be tricky
22 again.
23 THE WITNESS: I don't
24 recall, but I definitely had a

Page 407

1 conversation with Mr. Van
2 Dell.
3 BY MR. DAVIS:
4 Q. I'm going to give you
5 all the time you want to think of any
6 other conversation that you had with
7 Mr. Van Dell?
8 A. In regards to fixing
9 the credits?
10 Q. Yes.
11 A. Let me think about it.
12 MR. MALOFIY: She is
13 calling. Why don't you answer
14 the question then we'll take a
15 quick break?
16 THE WITNESS: I can't
17 remember.
18 MR. DAVIS: Okay. Why
19 don't we take a quick break.
20 VIDEOGRAPHER: The time
21 is now 5:57 p.m. and we are
22 going off the record.
23 ---
24 (At this time a short

Page 408

1 break was taken.)
2 ---
3 VIDEOGRAPHER: The time
4 is now 6:10 p.m. We are back
5 on the record.
6 BY MR. DAVIS:
7 Q. Were you a participant
8 in any of the conversations that Mr.
9 Barton told you he had with any of the
10 clients that I represent?
11 MR. MALOFIY:
12 Objection. You can answer.
13 BY MR. DAVIS:
14 Q. Regarding the credit
15 issue?
16 MR. MALOFIY:
17 Objection. You can answer.
18 BY MR. DAVIS:
19 Q. So that I can tell you
20 the clients, so you have a clear idea
21 of who I mean.
22 A. Okay.
23 Q. Usher, Sony, EMI, Mr.
24 Harris, Mr. Lewis, Mr. Avila, Mr.

Page 409

1 Avila, Mr. Pitts, Defenders of Music,
2 Flyte Ty Me Tunes, Sublime Basement
3 Tunez, UR-IV Music, Warner-Tamerlane
4 Publishing Corp., Bystorm
5 Entertainment, and Mark Pitts?
6 MR. MALOFIY:
7 Objection. You can answer.
8 THE WITNESS: I don't
9 recall having direct
10 communication, other than the
11 communication Dante had with
12 the other people.
13 BY MR. DAVIS:
14 Q. I don't understand your
15 answer.
16 A. Maybe I misunderstood
17 your question.
18 Q. I'm asking you -- I'll
19 restate it. Did you participate in
20 any conversation that Mr. Barton
21 initiated --
22 A. All those people?
23 Q. -- with any of the
24 people that you believe were telling

Page 410

1 him that they were going to fix the
2 credits?

3 MR. MALOFIY:

4 Objection, want to make
5 participate clearer for him.

6 BY MR. DAVIS:

7 Q. You were on the phone
8 with Mr. Barton?

9 A. No. No. Dante, again,
10 was the business -- my business
11 partner who took care of all the
12 business.

13 Q. Were you a participant,
14 meaning on the phone, with Mr. Barton
15 in any calls that may have been
16 initiated by any of the individuals
17 you understand Mr. Barton was talking
18 to regarding fixing the credits?

19 MR. MALOFIY:

20 Objection. You can answer.

21 THE WITNESS: I don't
22 recall being on the phone at
23 the same time.

24 BY MR. DAVIS:

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1 that you go see him?

2 A. I don't recall if I
3 just looked him up or -- I must have
4 looked him up. I don't recall anyone
5 recommending him.

6 Q. So this was the first
7 time you had seen Mr. Rosen for legal
8 advice?

9 A. First time, yeah.

10 Q. And you went to see him
11 for legal advice?

12 A. I went to go see him to
13 talk to him about this issue that was
14 going on with the credits.

15 Q. Was the issue then
16 related to Mr. Barton, Mr. Guice, and
17 the credits with respect to Bad Girl?

18 MR. MALOFIY:

19 Objection. That is not what
20 the document says and that is
21 not what he said.

22 MR. DAVIS: Mr.
23 Malofiy, I ask you again if
24 you will not interrupt my

Page 411

1 Q. Okay. Thank you. Who
2 is Simon Rosen?

3 A. Sounds very familiar.
4 Simon.

5 Q. Rosen?

6 A. Do you have a document
7 or anything like that? Simon Rosen.

8 Q. He is someone you have
9 identified in your complaint,
10 paragraphs 378 and 381. I'll get it
11 for you right away.

12 A. Okay. Yeah, I remember
13 who he is. I remember who Simon Rosen
14 is.

15 Q. Who is he?

16 A. Simon Rosen is an
17 attorney that I went to go see to
18 speak to him in regards to not being
19 properly credited for the song Club
20 Girl, Bad Girl.

21 Q. How did you meet Mr.
22 Rosen?

23 A. I went to his office.

24 Q. Did someone recommend

Page 413

1 deposition.

2 MR. MALOFIY: The
3 document speaks for itself.
4 If you would like him to read
5 the document first to answer
6 the question --

7 MR. DAVIS: I would
8 like to repeat what you told
9 me many times at deposition.
10 This is my deposition, and
11 I'll conduct it the way that I
12 see fit.

13 MR. MALOFIY: You are
14 conducting it. You have been
15 asking the same question for
16 six hours. I wouldn't have
17 done it that way.

18 BY MR. DAVIS:

19 Q. Tell me what you went
20 to consult with Mr. Rosen about?

21 A. The credits in Bad Girl
22 and Club Girl.

23 Q. And why did you do
24 that?

Page 414

1 A. I wasn't sure what was
2 going on.

3 Q. What do you mean by
4 that?

5 A. I wasn't sure of my
6 credits and how to deal with the
7 situation in regards to not being
8 credited.

9 Q. You went to see Mr.
10 Rosen after Mr. Barton had told you
11 that he would fix the mistake; is that
12 right?

13 A. I don't remember off
14 the top of my head if I went before or
15 after.

16 Q. Well, Mr. Barton --
17 sorry?

18 A. Yeah, I believe after.

19 Q. Okay. Well, Mr. Barton
20 had the conversation with you about
21 the credits sometimes in March of
22 2004, and what you testified earlier
23 was he said he would get the credits
24 fixed?

Page 415

1 A. Right.

2 Q. And what I'm looking at
3 in the complaint at Exhibit C, which
4 you have in front of you, is a
5 contingent fee agreement that is
6 identifying you as a party and with
7 Mr. Rosen's office, that is dated
8 October, without a day, 2004. So you
9 went to see him after Mr. Barton told
10 you that he was going to fix the
11 credits; is that correct?

12 MR. MALOFIY:

13 Objection. You can answer.

14 THE WITNESS: I believe
15 that is correct.

16 BY MR. DAVIS:

17 Q. All right. Thank you.
18 And did you meet with Mr. Rosen more
19 than one time?

20 A. No.

21 Q. Was a plan determined
22 when you went to see Mr. Rosen on the
23 first occasion?

24 MR. MALOFIY:

Page 416

1 Objection.

2 THE WITNESS: I don't
3 know what you mean by plan.

4 BY MR. DAVIS:

5 Q. Well, was there a plan
6 of action on how to deal with the
7 problem that you communicated to Mr.
8 Rosen that you were having?

9 A. It was more of try to
10 get some understanding of how things
11 worked in the music business, and I
12 expressed to him my participation in
13 the song, what I did, how I created
14 it, and how I wasn't properly credited
15 in the liner notes, and he wanted to
16 pursue a lawsuit, and I just -- you
17 know, I didn't go in there to pursue a
18 lawsuit. I wanted to get some
19 knowledge and I guess he just wanted
20 to jump the gun and push on this
21 thing. But, you know, that was --
22 that was my plan right there.

23 Q. What knowledge did he
24 impart to you having met with him?

Page 417

1 A. Not much, he was pretty
2 pushy in wanting to pursue the suit.

3 MR. MALOFIY: 12,
4 Marino 12.

5 MR. DAVIS: That is
6 what I think it is.

7 - - -

8 (At this time a
9 document was marked for
10 identification as Exhibit No.
11 Marino-12.)

12 - - -

13 BY MR. DAVIS:

14 Q. I'm going to show you
15 what has been marked as Marino-12, and
16 this is a draft -- it says draft on
17 it, letter, that is a one-page
18 document that appears to have been
19 authored by Simon J. Rosen, Esquire.
20 Are you familiar with this letter?

21 A. I am, but I would like
22 to read it again just to
23 refamiliarize. It has been a while.

24 Q. Did you familiarize

Page 418

1 yourself with it?

2 A. Yes.

3 Q. This came out of your
4 files; is that correct?

5 A. Yes.

6 Q. So you've seen this
7 document before; is that correct?

8 A. Yes.

9 Q. Did you see it at or
10 about October of 2004?

11 A. Sounds about right.

12 Q. Do you remember
13 discussing the contents of this letter
14 with Mr. Rosen?

15 MR. MALOFIY: Just so
16 you know, this is
17 attorney-client privilege.

18 You don't have to discuss the
19 contents of the letter. What
20 you can discuss is -- this
21 document you can discuss
22 whether or not you understand
23 if it was sent to Zomba or
24 Jive, you can discuss that,

Page 419

1 but you can't discuss -- you
2 can't discuss --

3 MR. DAVIS: Before you
4 say --

5 MR. MALOFIY: No. Whoa.
6 Whoa.

7 MR. DAVIS: Mr.
8 Malofiy, if you are asserting
9 privilege -- if you are
10 asserting privilege here just
11 assert the privilege.

12 MR. MALOFIY: He does
13 not understand -- if I say
14 assert privilege he will not
15 understand what it means. I'm
16 here to protect the record.

17 MR. DAVIS: You can
18 object when I ask a question
19 that you believe invades
20 attorney-client privilege.
21 That is the way it is done,
22 Mr. Malofiy.

23 MR. MALOFIY: No. When
24 it deals with attorney-client

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1 privilege there is a
2 heightened level of -- of care
3 that needs to be addressed,
4 because you are going into not
5 an issue of just an objection
6 but an issue where you are
7 asking about sensitive,
8 private and legally privileged
9 communications far greater
10 than any other privilege that
11 exists.

12 MR. DAVIS: Object to
13 my question.

14 MR. MALOFIY: Can I
15 finish?

16 MR. DAVIS: This is a
17 speech.

18 MR. MALOFIY: Do you
19 want to hold the baton.

20 MR. DAVIS: You are
21 spending time of my tape and I
22 have a limited time --

23 MR. MALOFIY: I have a
24 baton.

Page 421

1 MR. DAVIS: -- with
2 this witness. You asserted an
3 objection based on privilege.

4 MR. MALOFIY: You can't
5 --

6 BY MR. DAVIS:

7 Q. Did you discuss this
8 letter with Mr. Rosen?

9 MR. MALOFIY: Here you
10 go. Next question.

11 BY MR. DAVIS:

12 Q. Did you discuss this
13 letter with Mr. Rosen?

14 MR. MALOFIY: Dan, when
15 I object you just sit there.

16 MR. DAVIS: You are
17 instructing him not to answer
18 that question.

19 MR. MALOFIY: No, I'm
20 going to say something on the
21 record. You are going to
22 listen to what I say.

23 MR. DAVIS: I got your
24 --

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1 MR. MALOFIY: You are
2 not going to ask him about his
3 communications back and forth
4 with his prior attorney
5 because that is privileged.

6 MR. DAVIS: Mr.
7 Malofiy, listen to my
8 question. I asked him did you
9 discuss the letter with your
10 attorney.

11 MR. MALOFIY: Yeah, you
12 can't even do that.

13 MR. DAVIS: I can ask
14 him that.

15 MR. MALOFIY: No, you
16 can't.

17 MR. DAVIS: I can't ask
18 him about the contents of that
19 discussion, but I can ask him
20 if he had a discussion about
21 it.

22 MR. MALOFIY: No, you
23 can't even do that.

24 MR. DAVIS: Then

Page 424

1 Q. Do you know why there
2 is line on a diagonal across the typed
3 paragraphs?

4 MR. MALOFIY:

5 Objection. The document
6 speaks for itself, but you can
7 answer.

8 THE WITNESS: I do not.

9 BY MR. DAVIS:

10 Q. Okay. Did you
11 authorize Mr. Rosen to send this
12 letter?

13 MR. MALOFIY:

14 Objection. You can answer.

15 THE WITNESS: I don't
16 recall him -- telling him to
17 send this letter. He may or
18 may have not, I don't know,
19 but I don't recall telling him
20 to do so.

21 BY MR. DAVIS:

22 Q. Okay. Did you ever get
23 a copy of this letter that was
24 actually signed by Mr. Rosen that

Page 423

1 instruct him not to answer and
2 we'll get a ruling.

3 MR. MALOFIY: * Okay.
4 You don't have to answer any
5 questions regarding any
6 communications you had with
7 your prior lawyer or with your
8 current lawyer. Do you
9 understand that?

10 THE WITNESS: I do.

11 BY MR. DAVIS:

12 Q. Did your lawyer give
13 you this letter?

14 A. He did.

15 Q. Okay. Did you put the
16 draft on the document or did Mr. Rosen
17 do that?

18 A. Mr. Rosen did that.

19 Q. What is the markings at
20 bottom by the signature line? Do you
21 know what that is?

22 A. No.

23 Q. Did you put them there?

24 A. No.

Page 425

1 didn't have draft on it?

2 MR. MALOFIY:

3 Objection. You can answer.

4 THE WITNESS: I believe
5 that is the way he gave it to
6 me.

7 BY MR. DAVIS:

8 Q. Okay. You don't
9 remember any other version of this
10 letter?

11 A. This particular letter?

12 Q. Yes.

13 A. No.

14 Q. Okay. Now, as part of
15 the complaint, Exhibit C, if you want
16 me I'll turn to that page for you?

17 A. Exhibit C?

18 Q. Yes. That is Exhibit
19 C, and if you can turn to the next
20 page, please.

21 A. Sure.

22 Q. You'll see the document
23 behind Exhibit C of your complaint
24 says contingent fee agreement?

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1 A. Oh, okay.
 2 Q. Do you see that?
 3 A. Yeah.
 4 Q. Did you ever sign this
 5 document?
 6 MR. MALOFIY: Allow him
 7 a chance to review it.
 8 THE WITNESS: Yeah,
 9 just give me a minute. It has
 10 been a long time.
 11 MR. WILLIAMS: Do you
 12 have the original for
 13 Exhibit 11?
 14 MR. MALOFIY: The
 15 original?
 16 MR. WILLIAMS: Yeah.
 17 MR. MALOFIY: You mean
 18 on me right now?
 19 MR. WILLIAMS: Yeah,
 20 I'm just wondering --
 21 MR. DAVIS: That we
 22 marked.
 23 MR. WILLIAMS: With the
 24 sticker, do you happen to have

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1 that?
 2 THE WITNESS: This one.
 3 MR. DAVIS: That is 12.
 4 MR. WILLIAMS: The
 5 invoice.
 6 BY MR. DAVIS:
 7 Q. Have you reviewed the
 8 document?
 9 A. Yes, just give me one
 10 second. I'm on the last paragraph.
 11 MR. MALOFIY: I've
 12 checked my records, gentleman,
 13 I do not see it in my records,
 14 but give me one more moment
 15 and I'll just confirm that.
 16 BY MR. DAVIS:
 17 Q. Have you completed your
 18 review?
 19 A. Yes.
 20 Q. Did you -- do you
 21 recall ever signing that agreement?
 22 A. No.
 23 Q. Is there a reason you
 24 didn't sign it?

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1 MR. MALOFIY:
 2 Objection. If it goes into
 3 attorney-client issues you
 4 don't have to discuss it, just
 5 say --
 6 BY MR. DAVIS:
 7 Q. Was there a reason you
 8 didn't sign it?
 9 A. Was there a reason I
 10 didn't sign it? I'm trying to
 11 remember this. Yeah, he wanted me to
 12 go back and sign this letter and I did
 13 not go back and sign this letter. I
 14 did not.
 15 MR. MALOFIY: Just to
 16 be clear, you mean the
 17 contingency fee agreement?
 18 THE WITNESS: This.
 19 BY MR. DAVIS:
 20 Q. That is what we are
 21 referring to?
 22 A. Yeah, I didn't sign it.
 23 Q. Is it because you
 24 didn't want to pursue litigation, as

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1 he was recommending?
 2 MR. MALOFIY: *
 3 Objection. You don't have to
 4 answer that.
 5 MR. DAVIS: Are you
 6 instructing him not to answer?
 7 MR. MALOFIY: I am.
 8 MR. DAVIS: You are.
 9 Okay. Mark that instruction
 10 not to answer.
 11 BY MR. DAVIS:
 12 Q. This fee agreement says
 13 that -- and I understand you didn't
 14 sign it. I, Daniel Marino, agree to
 15 employ the Law Office of Simon Jeffrey
 16 Rosen, Esquire, as my attorney to
 17 represent my legal interest against
 18 all responsibility parties regarding
 19 my claims arising out of my
 20 co-production, co-authorship,
 21 co-publishing, co-administration and
 22 musicianship regarding the song Club
 23 Girl, which was used on Usher's song
 24 Bad Girl. Do you see that?

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1 A. I do.

2 Q. Is that a fair
3 statement of what you were discussing
4 with Mr. Rosen about his possible
5 representation of your interest?

6 MR. MALOFIY: * Hold
7 on. Objection you don't have
8 to answer that.

9 MR. DAVIS: He has
10 waived it by producing this
11 document.

12 MR. MALOFIY: Producing
13 the document does not mean you
14 can talk about --

15 MR. DAVIS: It
16 certainly does.

17 MR. MALOFIY: No, it
18 doesn't. It doesn't mean you
19 can talk about --

20 BY MR. DAVIS:

21 Q. Is that what --

22 MR. MALOFIY: You are
23 not his lawyer. Do you
24 understand that? Now, if I'm

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1 making an objection that
2 relates to attorney/client
3 privilege, I'll make my
4 objection and it will be
5 heard.

6 MR. DAVIS: Then, sir,
7 instruct him not to answer.

8 MR. MALOFIY: Okay.
9 I'm going to instruct him --

10 MR. DAVIS: If that is
11 what you want to do, do so.

12 MR. MALOFIY: Listen,
13 don't cut me off. If there
14 are questions relating to
15 communication you had with
16 your attorney they are
17 privileged, and what this man
18 says about how he can go ask
19 all these sorts of questions
20 about that is wrong and it's
21 improper and it's incorrect.

22 All right. So to the extent
23 any of the questions he is
24 asking relates to

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1 communications you had with
2 your attorney that is
3 improper.

4 MR. DAVIS: Sir, are
5 you instructing him not to
6 answer?

7 MR. MALOFIY: Yup.

8 MR. DAVIS: * Okay.

9 Mark that, please.

10 BY MR. DAVIS:

11 Q. You testified that you
12 didn't sign this agreement and that
13 Mr. Rosen wanted you to come back with
14 it, presumed, signed?

15 MR. MALOFIY: *

16 Objection, you don't have to
17 answer what Mr. Rosen wanted.

18 MR. DAVIS: Are you
19 instructing him again not to
20 answer?

21 MR. MALOFIY: You are
22 asking him about
23 attorney-client --

24 MR. DAVIS: * Are you

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1 instructing him not to answer?
2 Just tell me one way or the
3 other.

4 MR. MALOFIY: Yes.

5 MR. DAVIS: Fine.

6 MR. MALOFIY: If you
7 are going to ask question
8 about attorney-client
9 privilege I will just keep on
10 objecting and we'll go back
11 and forth like this.

12 MR. DAVIS: We'll let
13 the judge decide.

14 MR. MALOFIY: Fine, let
15 the judge decide.

16 BY MR. DAVIS:

17 Q. You testified about
18 going to see Mr. Rosen once. Did you
19 ever go back to his office?

20 A. No.

21 Q. Okay. Did you go to
22 see any other lawyer regarding the
23 credit issue or anything to do with
24 Club Girl or Bad Girl after you saw

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1 Mr. Rosen?
 2 A. No.
 3 Q. Until, of course, you
 4 saw Mr. Malofiy?
 5 A. Of course.
 6 Q. So from 2004 until
 7 sometime in 2011 you didn't speak to
 8 any other lawyer concerning the credit
 9 issue or any issue with respect to
 10 Club Girl or Bad Girl?
 11 MR. MALOFIY:
 12 Objection. You can answer.
 13 THE WITNESS: That's
 14 correct.
 15 BY MR. DAVIS:
 16 Q. And so that I have a
 17 complete record on this point, after
 18 that initial meeting with Mr. Rosen I
 19 know you said that you never went to
 20 see him again, did you ever call him
 21 again?
 22 A. No.
 23 Q. So there was no contact
 24 with Mr. Rosen again?

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1 A. None whatsoever.
 2 Q. Thank you. In 2005 you
 3 testified earlier that you went to the
 4 Grammys where you saw Mr. -- where
 5 you saw the Avila brothers?
 6 A. And many other people,
 7 yes.
 8 Q. Okay. You saw a lot of
 9 other people?
 10 A. Right.
 11 Q. Okay. Now, I'm going
 12 to show you what we marked as Guice
 13 deposition as Exhibit 4. Do you
 14 recall that photograph?
 15 A. Yes.
 16 Q. And is that a
 17 photograph of you and Mr. Barton and
 18 Stevie G. at the 2005 Grammy awards?
 19 A. Yes.
 20 Q. Where were they held?
 21 A. Los Angeles.
 22 Q. Did you travel with
 23 anyone else to the Grammys?
 24 A. I traveled with those

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1 gentlemen there.
 2 Q. You went together?
 3 A. Yes.
 4 MR. MALOFIY: Did you
 5 mark that?
 6 MR. DAVIS: This is
 7 from the Guice deposition.
 8 MR. MALOFIY: Oh, so
 9 you didn't mark it as an
 10 exhibit?
 11 MR. DAVIS: No, it is
 12 already an exhibit.
 13 MR. MALOFIY: Okay.
 14 MR. DAVIS: Let's just
 15 refer on the record that I
 16 used in the course of this
 17 deposition a previously marked
 18 exhibit in the Guice
 19 deposition.
 20 MR. MALOFIY: Do you
 21 want to mark it, even though
 22 you don't have other copies?
 23 I don't have a problem with
 24 you marking it.

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1 MR. DAVIS: We know it
 2 is part of the record.
 3 MR. MALOFIY: Okay.
 4 You referred to an exhibit I
 5 thought you want might to mark
 6 it. If you don't, fine. If
 7 you don't have copies for
 8 opposing counsel I'm not going
 9 to make an issue of it if you
 10 want to keep the record
 11 complete. It would be Exhibit
 12 Marino 13.
 13 BY MR. DAVIS:
 14 Q. Now, how did you get a
 15 ticket to the Grammys?
 16 A. Two tickets were given
 17 to us from Usher's camp. I don't know
 18 who they came from.
 19 Q. And how do you know
 20 that they came from Usher's camp?
 21 A. Dante had received them
 22 in the mail at the studio and he came
 23 in and neither of us had paid for
 24 them.

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1 Q. Well, did Dante tell
2 you that he had gotten them from
3 anyone that worked with Usher?

4 A. He did.

5 Q. What did he say
6 precisely, that you can recall?

7 A. He said that -- he
8 mentioned the person's name so-and-so
9 sent us tickets to go to the Grammys
10 because it is being nominated for
11 multiple Grammys.

12 Q. He didn't tell you that
13 because he was credited as a producer
14 on the album that the Grammy
15 Association was providing tickets to
16 him to appear at the Grammys?

17 A. I don't remember
18 exactly what he said, but I knew that
19 we received free tickets because it is
20 our song.

21 Q. Do you have any
22 personal knowledge other than what Mr.
23 Barton told you of where the tickets
24 came from?

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1 MR. MALOFIY:

2 Objection.

3 THE WITNESS: I believe
4 there may be some markings on
5 the actual Grammy tickets. I
6 don't recall.

7 BY MR. DAVIS:

8 Q. Do you have those
9 tickets?

10 A. Maybe.

11 Q. Oh, you do?

12 A. Maybe, yeah.

13 Q. Did you save them?

14 A. Yeah, I saved them.

15 Q. Why would you have
16 saved them?

17 A. I saved them because at
18 that time it was a very special time
19 for me, however I didn't know I was
20 being crooked over by all these very,
21 you know, high end people that work
22 for the record label.

23 Q. So it was a special
24 moment for you to go to the Grammys?

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1 A. It was a special --

2 MR. MALOFIY:

3 Objection. You can answer.

4 THE WITNESS: It was a
5 special moment because I
6 didn't know the song was being
7 stolen from me, had I known
8 the song was being stolen from
9 me and I wasn't being properly
10 credited then I don't even
11 know if I would have attended
12 and nor no way in any shape or
13 form would I have been happy
14 about it. I wouldn't have had
15 that smile on my face.

16 BY MR. DAVIS:

17 Q. Well, when you went to
18 Grammys you knew, and this was almost
19 a year after the album was released
20 and Bad Girl had been included on it,
21 that you still had not been credit as
22 a co-writer, co-producer, engineer and
23 the other credits that you say you
24 were denied; isn't that correct?

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1 MR. MALOFIY:

2 Objection.

3 THE WITNESS: No.

4 MR. MALOFIY: Hold on.

5 Objection. You can answer.

6 THE WITNESS: It is not
7 correct.

8 BY MR. DAVIS:

9 Q. You mean the credits
10 had been fixed at that point?

11 A. No, I mean it was the
12 credits on the liner notes. I don't
13 know about the other real credits.
14 I'm not a business person. I'm not a
15 lawyer. I don't really know how that
16 works in the background.

17 Q. At the time that you
18 went to the Grammys did you have any
19 information from any source that the
20 credit issue that you had complained
21 about had been fixed?

22 A. I was --

23 MR. MALOFIY:

24 Objection. You can answer.

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1 THE WITNESS: I was
 2 told by Dante that Usher's
 3 people were fixing it. They
 4 told him that and he
 5 communicated that to me.
 6 BY MR. DAVIS:
 7 Q. I understand that, but
 8 it wasn't fixed at the time you
 9 attended the Grammys?
 10 A. It still couldn't been
 11 fixed, and you know that I wrote the
 12 song and I produced the song and you
 13 are still defending these people. I
 14 don't understand how you can, like, do
 15 that.
 16 Q. Sir, I don't have any
 17 personal knowledge of any of these
 18 affairs. So --
 19 A. Has anyone come forward
 20 saying they, other people wrote the
 21 song? It is my song.
 22 Q. Let's continue the
 23 deposition.
 24 A. There is no one here

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1 and there will be no one to testify to
 2 say that they wrote, produced the
 3 original song and composition of Club
 4 Girl which is Bad Girl.
 5 Q. May I continue?
 6 A. You are continuing to,
 7 like, run this deposition as if I
 8 didn't, and you're trying to -- it is
 9 like black and white. How do you do
 10 that?
 11 Q. Can I continue my
 12 questions, please?
 13 A. I would like you to
 14 answer that, how do you do that?
 15 Q. Unfortunately this is
 16 not an occasion for me to answer
 17 questions, it is for you to answer
 18 questions.
 19 A. It is so untruthful,
 20 man, lying, stealing and cheating.
 21 You are a part of it. You are making
 22 money on my song that was stolen from
 23 me.
 24 MR. MALOFIY: They are

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1 all making money.
 2 BY MR. DAVIS:
 3 Q. Mr. Marino --
 4 A. I'm sorry. I'm sorry.
 5 I'm a little upset.
 6 Q. May I ask you a
 7 question?
 8 A. Yes.
 9 Q. Did you ever speak
 10 directly with anyone in what you call
 11 Usher's camp about the tickets you
 12 believed that they had sent to Dante
 13 Barton?
 14 MR. MALOFIY:
 15 Objection. You can answer.
 16 THE WITNESS: I don't
 17 recall. I may have.
 18 BY MR. DAVIS:
 19 Q. Did you send a thank
 20 you note to anyone for giving you
 21 tickets to the Grammys from what you
 22 call Usher's camp?
 23 A. I don't recall. Maybe.
 24 Q. Maybe, why do you say

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1 maybe?
 2 A. Because I'm the type of
 3 person that sends thank you cards.
 4 Q. But you don't recall
 5 that of such a momentous moment in
 6 your life that you were going to
 7 Grammys, you don't recall whether or
 8 not you thanked the persons that you
 9 believe gave you tickets?
 10 A. I don't remember.
 11 Q. You say in your
 12 complaint that you were comped for the
 13 Grammys, do you recall that?
 14 A. Yes.
 15 Q. What do you mean by
 16 comped?
 17 A. Free tickets.
 18 Q. It was just the tickets
 19 that you received free?
 20 A. That's correct.
 21 Q. Who paid for the trip
 22 out there?
 23 A. I did.
 24 Q. You paid yourself?

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1 A. Myself. He paid his
2 own way, yes.
3 Q. Who is he?
4 A. Dante.
5 Q. Did you each bear the
6 cost of your experiences for the trip?
7 A. Yes.
8 Q. So what you meant in
9 the complaint was what was comped was
10 the tickets?
11 A. Correct.
12 Q. Did you ever thank
13 Usher for the tickets?
14 A. I don't recall thanking
15 Usher for the tickets.
16 Q. Did you ever thank Mark
17 Pitts for the tickets?
18 A. No.
19 Q. Did you ever thank the
20 Avila brothers for the tickets?
21 A. I don't believe any of
22 the parties that you mentioned were
23 responsible for giving those tickets.
24 Q. Then who from what you

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1 have described as Usher's camp would
2 be the persons that you believe sent
3 the tickets to Dante Barton?
4 A. Whoever would be in
5 charge of distributing tickets to the
6 producers of the track.
7 Q. How do you have this
8 understanding that there is someone in
9 charge of distributing tickets to
10 distributors -- producers on the
11 track?
12 A. I thought that is
13 pretty much what you said earlier.
14 No?
15 Q. No. I said to you did
16 Dante Barton tell you that he was
17 given tickets as a producer on the
18 track from the Grammy association?
19 A. Oh, no.
20 Q. I prefer you not twist
21 my words.
22 A. That is what I thought
23 you said.
24 Q. Okay.

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1 A. It has be a little bit
2 tricky throughout the day with you.
3 Q. Oh, really. Okay.
4 A. What was the question
5 again?
6 MR. DAVIS: Would you
7 read it back, please.
8 MR. MALOFIY: I think
9 the witness is getting tired.
10 THE WITNESS: I am.
11 MR. MALOFIY: We'll go
12 as long as we can.
13 MR. DAVIS: I have
14 seven hours, if he wants to
15 take a break I'm happy to give
16 him a break after this
17 question is completed. We
18 just took a break, I would
19 say, within the last
20 15 minutes.
21 MR. MALOFIY: I don't
22 think so.
23 MR. DAVIS: Can you
24 please read back the question.

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1 - - -
2 (At this time the court
3 reporter read back from the
4 record as was requested.)
5 - - -
6 THE WITNESS: I guess
7 my understanding comes from
8 the notion that we received
9 free tickets.
10 BY MR. DAVIS:
11 Q. It is your guess then,
12 it that right?
13 A. That is what I was
14 told.
15 Q. Who told you that?
16 A. Dante.
17 Q. Anybody else tell you
18 that?
19 A. No.
20 MR. MALOFIY: Do you
21 want to take a final break
22 before we wrap it up?
23 THE WITNESS: How much
24 time do we have left?

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1 MR. MALOFIY: Probably
2 about 15 minutes.

3 MR. DAVIS: We have
4 almost two hours.

5 THE WITNESS: No, not
6 even close.

7 VIDEOGRAPHER: There is
8 20 minutes left on this DVD.
9 We are at five hours 30
10 minutes.

11 MR. DAVIS: Do you want
12 to take a break?

13 THE WITNESS: Let's go
14 a little longer.

15 BY MR. DAVIS:

16 Q. Okay. I'm going to
17 show you what we have previously
18 marked as Exhibit Marino-11, which is
19 the invoice that bears Wallace Collins
20 letterhead. Do you see that document?

21 A. (Indicating.)

22 Q. Are you familiar with
23 this document?

24 A. I see it, yeah.

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1 Q. Now in the complaint
2 you reference that Mr. Barton had
3 shown you a letter and an invoice.
4 When you were referring to the letter
5 did you mean just this invoice,
6 because there was no exhibit attached
7 to your complaint that was a letter?

8 MR. MALOFIY:

9 Objection.

10 THE WITNESS: Are you
11 sure about that?

12 MR. MALOFIY:

13 Objection. You can answer.

14 THE WITNESS: I recall
15 a letter.

16 BY MR. DAVIS:

17 Q. Please review paragraph
18 390 of the complaint. It is on page
19 54.

20 MR. MALOFIY: Paragraph
21 390?

22 MR. DAVIS: Yes, sir.

23 MR. MALOFIY: Thanks.

24 THE WITNESS: Okay.

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1 BY MR. DAVIS:

2 Q. It says that Barton
3 presented to Marino a letter from an
4 attorney in New York, drafted
5 recording agreements, that is only
6 partial of that sentence. You see
7 that, don't you?

8 A. I do.

9 Q. What letter are you
10 referring to?

11 A. I've got to read prior
12 to this because I'm not getting the
13 whole thing out of 390. Oh, okay.
14 You could have read 391 as well.
15 Okay.

16 MR. MALOFIY: I think
17 you are getting hung up on
18 letter here, as I refer to
19 this as a letter.

20 MR. DAVIS: I'm not
21 asking you to testify, Mr.
22 Malofiy. We are in the middle
23 of a question and it is
24 improper to interject when

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1 there is a pending question.

2 MR. MALOFIY: I thought
3 maybe you were confused.

4 MR. DAVIS: I don't
5 want you to help, please.

6 THE WITNESS: Yes, this
7 is probably the letter here.
8 Yeah.

9 BY MR. DAVIS:

10 Q. So you are referring to
11 the document that has been marked as
12 Marino-11?

13 A. Yes.

14 Q. There is no letter as
15 referred to in paragraph 390 of your
16 complaint?

17 A. I believe that is the
18 letter.

19 Q. You are calling the
20 description under April through
21 November 2005 as the letter?

22 A. Yes.

23 MR. MALOFIY: Just to
24 be clear, he didn't write the

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1 complaint, the attorney did
2 so.

3 MR. DAVIS: Mr. Marino
4 -- Mr. Malofiy, again, I have
5 a pending question and you are
6 interrupting.

7 MR. MALOFIY: I'm just
8 trying to add --

9 MR. DAVIS: Really
10 other than objections I just
11 ask you to be quiet, please.

12 MR. MALOFIY: I'm
13 trying to help you. Trying to
14 do my best.

15 MR. DAVIS: What was
16 the question before Mr.
17 Malofiy interrupted me again?

18 MR. MALOFIY: Assisted.

19 ---

20 (At this time the court
21 reporter read back from the
22 record as was requested.)

23 ---

24 BY MR. DAVIS:

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1 here in the complaint.

2 Q. November 22nd of 2005,
3 somewhere around that time?

4 A. Yeah, I have the fall
5 of 2005 in my complaint. Yeah, that
6 sounds right.

7 Q. Was this document in
8 the folder or the box that you found
9 at the studio when you were cleaning
10 things out in 2009?

11 A. He handed it to me in
12 2005.

13 Q. Did he go over it with
14 you?

15 A. Yes, I mean if you read
16 the complaint it tells you why he gave
17 me this.

18 Q. Was this in the box or
19 folder of documents that you say you
20 removed from the studio in 2009?

21 MR. MALOFIY:

22 Objection. You can answer.

23 THE WITNESS: This?

24 BY MR. DAVIS:

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1 Q. Now, does your name
2 appear anywhere on this document?

3 A. No.

4 Q. And who is it addressed
5 to?

6 A. Dante Barton and Wil
7 Guice.

8 Q. And 835 Pleasant Road,
9 Yeadon, Pennsylvania 19050, what is
10 that -- what address is that?

11 A. I believe that is
12 Dante's home.

13 Q. And is that the same
14 residence at which Wil Guice resided
15 as well?

16 A. At a certain period he
17 was, yes.

18 Q. Okay. How did you come
19 to have this document in your
20 production?

21 A. Dante gave it to me.

22 Q. When did Dante give
23 this to you?

24 A. Somewhere it says it

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1 Q. This particular
2 document.

3 A. This particular
4 document he handed to me.

5 Q. I understand that, but
6 did you also find it in that file or
7 box?

8 A. No, this was handed to
9 me by Dante Barton.

10 Q. And you kept this
11 document?

12 A. Obviously.

13 Q. Why did you keep this
14 document?

15 A. It was important to me.

16 Q. Why was it important to
17 you?

18 A. Because he told me when
19 the credit is fixed that is when my
20 credit was going to be applied.

21 Q. Where does it talk
22 about fixing credits on this invoice?

23 A. I apologize, not
24 credits. Negotiation with HoriPro,

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1 affairs -- preparation -- this was one
2 of the letters that they were talking
3 about -- what Dante had told me and
4 what it says here, that there was a
5 negotiation going on with the points
6 or credit percentage for song writers,
7 there was ongoing disputes and this
8 was one of the letters he had handed
9 me.

10 Q. You would agree with me
11 this has nothing to do with any issue
12 regarding credits, is that correct?

13 MR. MALOFIY:

14 Objection.

15 THE WITNESS: To me
16 that is all it means.

17 BY MR. DAVIS:

18 Q. That is all it means?

19 A. Yeah.

20 Q. Even though the word
21 credit does not appear there anywhere,
22 fixing credits?

23 A. I don't know if it does
24 or doesn't.

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1 Q. Correcting mistake
2 pertaining to --

3 MR. MALOFIY: That is
4 what it says.

5 BY MR. DAVIS:

6 Q. -- Mr. Marino's
7 attribution for the song Bad Girl, it
8 doesn't say anything like that, does
9 it?

10 MR. MALOFIY:
11 Objection. Marino-11 speaks
12 for itself.

13 MR. DAVIS: I ask you
14 again, Mr. Malofiy, this has
15 become tiresome. You've done
16 it all afternoon, all morning.

17 MR. MALOFIY: If you
18 sat -- every question, Derek
19 Williams objected to every
20 single question. Every single
21 question I asked you objected
22 to every single question and
23 then you led and coached Van
24 Dell, who happens to be

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1 represented by Manan, who
2 represents Usher in his other
3 copyright infringement case,
4 which was real slimy. All
5 right. And you didn't even
6 disclose that. You didn't
7 disclose that and then you sat
8 there and coached him for at
9 length.

10 MR. DAVIS: Mr. Malofiy
11 -- Mr. Malofiy, as a lawyer
12 you really should know better.
13 You really should know better.

14 MR. MALOFIY: You know
15 what, you are not used to
16 someone who is straight and
17 calls people out.

18 BY MR. DAVIS:

19 Q. Did you have more than
20 one conversation with Mr. Barton about
21 this document, which to me looks like
22 an invoice? Do you think it is an
23 invoice?

24 A. No, to me it looks like

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1 a letter.

2 Q. It is a letter. Okay.

3 A. It has a letterhead on
4 it, yeah.

5 Q. Now, this letter as you
6 call it says there is a total
7 outstanding balance as of the above
8 date, \$7,500. Do you see that?

9 A. Yes.

10 Q. All right. Did you pay
11 any portion of that \$7,500 to a lawyer
12 named Wallace Collins?

13 A. I have paid monies to
14 Wallace Collins in the past. I don't
15 recall if it was for this or something
16 else.

17 Q. Do you have any
18 evidence of any payments by you to
19 Wallace Collins?

20 A. You know, I never
21 thought to look for that. If I maybe
22 check my bank statements from the
23 past, possibly.

24 Q. You would have paid him

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1 by check?
 2 A. Correct.
 3 Q. And would that have
 4 been on a personal check?
 5 A. Yeah.
 6 Q. And is it your
 7 testimony that you retained the
 8 service of Mr. Collins to act on your
 9 behalf as your lawyer?
 10 MR. MALOFIY:
 11 Objection. You can answer.
 12 THE WITNESS: As my
 13 lawyer, like, he wrote some
 14 contracts for me in the past.
 15 BY MR. DAVIS:
 16 Q. And you reimbursed --
 17 you paid him for those service?
 18 A. Yeah.
 19 Q. Did you get any bills
 20 from him for such services?
 21 A. I must have.
 22 Q. Do you have those
 23 bills?
 24 A. I'd have to look.

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1 Q. You didn't look before?
 2 A. I didn't look for bills
 3 from Wallace Collins in regards to me
 4 paying him anything, but it is
 5 possible that I have them.
 6 Q. Did you ever meet with
 7 Mr. Collins regarding the credit issue
 8 that you claimed was not corrected by
 9 Mr. Barton?
 10 A. No.
 11 Q. Regarding Bad Girl?
 12 A. No.
 13 Q. Did you ever call him
 14 about it?
 15 A. No.
 16 Q. Did you ever send him
 17 an e-mail about it?
 18 A. No.
 19 Q. Did you ever text him
 20 about it?
 21 A. No.
 22 Q. So any services that
 23 you may have engaged Mr. Collins for
 24 had nothing to do with fixing credits

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1 on Bad Girl, which appeared on the
 2 Confessions album?
 3 A. Not at all.
 4 MR. MALOFIY: What is
 5 going on? How much time do we
 6 have?
 7 VIDEOGRAPHER: We've
 8 got about six minutes.
 9 MR. MALOFIY: We can
 10 run to the end of the tape. I
 11 don't have a problem.
 12 MR. DAVIS: Thank you.
 13 BY MR. DAVIS:
 14 Q. What contracts did Mr.
 15 Collins prepare for you?
 16 A. You have it in your
 17 exhibits.
 18 Q. The recording agreement
 19 that has blank spaces in it?
 20 A. You'd have to show it
 21 to me.
 22 MR. MALOFIY: On time
 23 we are down to an hour.
 24 As the court reporter

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1 how are you doing?
 2 THE COURT REPORTER:
 3 I'm fine. Thank you.
 4 MR. DAVIS: We are
 5 going to mark as Marino-13 a
 6 multi-page document that is
 7 identified as exclusive artist
 8 recording agreement.
 9 ---
 10 (At this time a
 11 document was marked for
 12 identification as Exhibit No.
 13 Marino-13.)
 14 ---
 15 MR. DAVIS: And this
 16 was from the production of the
 17 plaintiff. I'm sorry, I don't
 18 have a copy for you.
 19 MR. MALOFIY: That is
 20 fine. Let me look at it real
 21 quick and I'll be fine with
 22 it. There is occasions when I
 23 don't have copies as well.
 24 Okay.

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1 BY MR. DAVIS:

2 Q. Just to go back to
3 Exhibit 11, which is in front of you,
4 you testified a moment ago believing
5 that you may have made some payments
6 to Mr. Collins, but the payments that
7 you are referring to have nothing to
8 do with the amount that appears on
9 Marino-11?

10 MR. MALOFIY:

11 Objection. You can answer.

12 THE WITNESS: I just
13 don't remember what the
14 payment was for.

15 BY MR. DAVIS:

16 Q. Okay.

17 MR. WILLIAMS: This is
18 one without hole punches. We
19 are going to use this one
20 instead.

21 BY MR. DAVIS:

22 Q. I pulled out of the
23 production that you previously made in
24 this case the recording contract that

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1 A. Kind of going through
2 it to make sure it is the same
3 contract.

4 Q. We didn't have that
5 from our pile?

6 MR. MALOFIY: You have
7 a contract that is multiple
8 pages. You want to ask him
9 questions about it, he should
10 know what the contract says.

11 BY MR. DAVIS:

12 Q. This is from your
13 files.

14 A. Okay. All right.

15 Q. Okay. Do you recognize
16 the document?

17 A. I didn't get to go
18 through the whole thing but it looks
19 like it is the same one.

20 Q. Okay. Now, as I said
21 previously that the document has blank
22 spaces in it. Do you see that?

23 A. Oh, I see what you mean
24 now. Okay.

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1 I described a moment ago. Do you
2 recognize that document?

3 A. Just give me a second.
4 You want these also. Don't mix it up.
5 There is other pages on top that don't
6 belong in there. See it?

7 MR. MALOFIY: Do you
8 want to switch the tape?

9 VIDEOGRAPHER: The time
10 is now 6:59 p.m. --

11 MR. DAVIS: We were in
12 the middle of a question so.

13 MR. MALOFIY: Then ask
14 your question, stay on the
15 tape.

16 MR. DAVIS: You are off
17 already, right?

18 VIDEOGRAPHER: No, not
19 yet.

20 THE WITNESS: I just
21 wanted to read it first.

22 BY MR. DAVIS:

23 Q. You want to read the
24 entire contract?

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1 Q. You see the top there
2 on page one?

3 A. Uh-huh.

4 Q. If you go to the last
5 page of the document it is not signed
6 by anyone?

7 MR. WILLIAMS: We need
8 to cut the tape.

9 VIDEOGRAPHER: The time
10 is now 7:00 p.m., and this
11 concludes DVD three in the
12 deposition of Daniel Marino.
13 We are going off the record.

14 - - -

15 (At this time a short
16 break was taken.)

17 - - -

18 VIDEOGRAPHER: The time
19 is now 7:08 p.m. This begins
20 DVD number four in the
21 deposition of Daniel Marino.
22 We are now on the record.

23 BY MR. DAVIS:

24 Q. All right. You were

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1 reviewing the exclusive artist
 2 recording agreement and I had asked
 3 you about the -- pointed out the
 4 blanks on the first paragraph and then
 5 I was turning to the last page to show
 6 you that the document was unsigned.
 7 Do you have in any of your files a
 8 copy of this agreement that has been
 9 filled in and signed by anyone?
 10 A. Not that I recall.
 11 Q. Do you know if this
 12 contract had been prepared for a
 13 particular artist that you were
 14 considering signing?
 15 A. Yes.
 16 Q. Who is that artist?
 17 A. Melody Gardough.
 18 Q. And that artist was
 19 going to be signed to Underworld
 20 Entertainment, Inc.?
 21 A. That is what it says
 22 there.
 23 Q. So looking at this
 24 document does that refresh your

Page 471

1 recollection of whether or not
 2 Underworld Entertainment was a
 3 corporation?
 4 MR. MALOFIY:
 5 Objection. You can answer.
 6 THE WITNESS: I wish I
 7 could help you more. I just
 8 don't know what I-N-C really
 9 stands for.
 10 BY MR. DAVIS:
 11 Q. Incorporated?
 12 A. Incorporated, so there
 13 is your answer.
 14 MR. MALOFIY:
 15 Objection. The document speak
 16 for itself. You can answer.
 17 BY MR. DAVIS:
 18 Q. Does this refresh your
 19 recollection of whether or not
 20 Underworld Entertainment was an
 21 corporation?
 22 A. You brought it to my
 23 attention. It's a corporation.
 24 Q. And you were the chief

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1 executive officer of that corporation?
 2 A. I was an owner of the
 3 company.
 4 Q. Well, in your resume
 5 you call yourself CEO. Is that
 6 incorrect?
 7 MR. MALOFIY:
 8 Objection, you can answer.
 9 THE WITNESS: I really
 10 -- Like I said earlier, I put
 11 it on there because me and
 12 Dante said we are both CEO's,
 13 it sounds cool, and I'm not
 14 too familiar with what that
 15 really means.
 16 BY MR. DAVIS:
 17 Q. Okay. Now you
 18 mentioned that there was a particular
 19 artist in mind for this contract. Was
 20 that artist signed?
 21 A. No.
 22 Q. Is there a reason that
 23 artist wasn't signed?
 24 A. Yes.

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1 Q. What was the reason?
 2 A. She was in a terrible
 3 car accident and almost died.
 4 Q. Did you have Mr.
 5 Collins prepare any other exclusive
 6 artist recording agreements for you?
 7 A. No.
 8 Q. Did he prepare any
 9 other agreement at your request?
 10 A. Not that I can recall.
 11 Q. Is there any reason
 12 that you selected Mr. Collins to be
 13 your lawyer?
 14 A. This was an attorney
 15 that Dante had already had ongoing
 16 communications with.
 17 Q. Did you have an
 18 engagement letter with Mr. Collins in
 19 which he identified himself as your
 20 lawyer and you his client and where it
 21 identified what you had to pay him for
 22 the services that he was rendering to
 23 you?
 24 A. Which services are

Page 474

1 you --
 2 Q. Any legal services?
 3 A. I don't remember
 4 getting one of those letters.
 5 Q. Okay. All right. Who
 6 requested this agreement?
 7 A. Requested it from whom?
 8 Q. From Mr. Wallace -- Mr.
 9 Collins?
 10 A. Wallace Collins, right.
 11 I would think Dante and I spoke about
 12 getting this artist agreement. Well,
 13 that is what happened, we needed
 14 artists agreements because we were
 15 getting artists under our label, and I
 16 believe he was the person that
 17 communicated with Wallace Collins.
 18 Q. Did you ever go to Mr.
 19 Collins' office in New York City?
 20 A. No.
 21 Q. Did you ever speak with
 22 Mr. Collins' on the telephone?
 23 A. Maybe. Maybe.
 24 Q. Does your maybe mean

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1 you think you might have spoken to him
 2 once?
 3 A. I don't recall. I
 4 can't say for sure.
 5 Q. So you don't have a
 6 recollection of any specific
 7 conversation with Mr. Collins?
 8 A. No.
 9 Q. Do you remember talking
 10 to him about this particular contract?
 11 A. No.
 12 Q. Did Mr. Collins ever
 13 come to your studio?
 14 A. Not when I was there.
 15 Q. Okay. If I asked you
 16 forgive me, do you recall ever
 17 communicating with Mr. Collins by
 18 either e-mail or text?
 19 A. Again, it just goes
 20 back to Dante was the person handling
 21 the business affairs so he was the one
 22 speaking directly with Mr. Collins.
 23 Q. I showed you previously
 24 what has been marked Marino

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1 Exhibit 10. Do you recall that
 2 document? It's a group of documents.
 3 A. I saw this earlier you
 4 said?
 5 Q. Yes. This is one of
 6 the documents that you said that you
 7 found --
 8 A. Excuse me one second,
 9 this things keeps falling. Do you
 10 have a better way to possibly -- I
 11 mean, you see how the clip just slides
 12 off all the time. It is the same
 13 clip, never mind.
 14 Q. This is the document I
 15 showed you previously that you said
 16 were statements that you had found
 17 sometime in 2009 after Mr. Barton
 18 disappeared.
 19 A. Okay.
 20 Q. Did Mr. Barton show you
 21 these materials at or about the time
 22 that he received them?
 23 A. These documents?
 24 Q. Yes.

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1 A. No. No, not at all.
 2 Q. When he paid you a
 3 partial payment of the mechanical
 4 royalties for Bad Girl did he show you
 5 a statement that he received from a
 6 publisher or the record company with
 7 respect to those royalties?
 8 A. I don't remember if he
 9 did or if he didn't. If he showed me
 10 a statement?
 11 Q. Yes, that he had
 12 received?
 13 A. Maybe, possibly. I
 14 don't know.
 15 Q. So it is possible that
 16 he did?
 17 A. Possible that he did,
 18 possible that he didn't. I mean, I
 19 just don't remember. I remember
 20 getting a check and cashing it and
 21 being excited because I had some
 22 money.
 23 Q. For Bad Girl?
 24 A. Club Girl, Bad Girl,

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1 same song.
 2 Q. Whichever?
 3 A. But I don't remember.
 4 Q. When -- would you
 5 describe the circumstances of this
 6 conversation with Mr. Barton about the
 7 payment of these mechanical royalties
 8 for Bad Girl?
 9 MR. MALOFIY:
 10 Objection. You can answer.
 11 THE WITNESS: I really
 12 can't recall the conversation
 13 that we had. Just -- I just
 14 remember that we got paid,
 15 here is your cut.
 16 BY MR. DAVIS:
 17 Q. When he said, we got
 18 paid, what was he referring to?
 19 A. Let me say it again.
 20 I'm saying these words, I'm not saying
 21 word for word that is what he said.
 22 Q. I understand.
 23 A. That is just like how I
 24 remember it. But --

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1 Q. I was going to say, in
 2 words or substance he said something
 3 like that?
 4 A. Yeah, words or
 5 substance, you know, here, we got
 6 paid, here is your cut.
 7 Q. When he said, we got
 8 paid, what was he referring to?
 9 A. For the mechanical
 10 royalties on the Club Girl song.
 11 Q. Do you know what
 12 mechanical royalties?
 13 A. I believe so.
 14 Q. Could you tell me what
 15 you think that they are?
 16 MR. MALOFIY:
 17 Objection. Now or then, just
 18 to be clear.
 19 BY MR. DAVIS:
 20 Q. Then?
 21 A. Then, no. Now I know,
 22 because I went through extensive
 23 reading and speaking with my attorney
 24 who educated me, but at the time I

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1 just thought that was what we got
 2 paid. I didn't really I know.
 3 Q. What you got paid for
 4 sales of Bad Girl?
 5 MR. MALOFIY:
 6 Objection, he said --
 7 THE WITNESS: Club
 8 Girl.
 9 BY MR. DAVIS:
 10 Q. Club Girl, Bad Girl?
 11 A. Correct, yes.
 12 Q. Yes?
 13 A. That is what I
 14 believed.
 15 Q. Okay. And did Mr.
 16 Barton explain to you how he came up
 17 with the number \$4,553.06?
 18 A. No. I didn't ask.
 19 Q. Do you recall the
 20 circumstances of when he gave you the
 21 check, aside from the fact you said
 22 you were excited?
 23 A. Yeah, I mean -- no.
 24 No, I don't.

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1 Q. When he gave you that
 2 check did you deposit it with your
 3 bank?
 4 A. I believe I did, yes.
 5 Q. And at some point in
 6 time you spent the money that you had
 7 deposited from that check?
 8 A. I remember what I spent
 9 the check on.
 10 Q. What did you spend it
 11 on?
 12 A. My kitchen. Went to
 13 Ikea, purchased a kitchen for my
 14 house. Installed it myself.
 15 Q. The first monies that
 16 you had received from Bad Girl?
 17 MR. MALOFIY:
 18 Objection. You can answer.
 19 THE WITNESS: Club
 20 Girl. I needed a kitchen.
 21 BY MR. DAVIS:
 22 Q. Are you still in that
 23 space where you installed the kitchen?
 24 A. That house is the house

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1 where my current studio is.

2 Q. Okay. When you go in
3 that kitchen do you think of Club
4 Girl, Bad Girl?

5 A. No.

6 Q. No?

7 A. No.

8 Q. But you know it came
9 from sales of Club Girl, Bad Girl?

10 MR. MALOFIY:

11 Objection.

12 THE WITNESS: Yeah, of
13 course I know. Yeah.

14 BY MR. DAVIS:

15 Q. So the documents that
16 comprise Marino-10, you never saw
17 these until sometime in 2009; is that
18 correct?

19 A. That's correct.

20 Q. In 2006 in your
21 complaint you refer to there still
22 being issues with the credits that
23 prevented you from getting paid. This
24 is after you received that check?

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1 A. Excuse me. Can you
2 please say that again, I was yawning.
3 Just tired.

4 Q. I'm sorry. In your
5 complaint you refer to issues still
6 lingering in 2006 with respect to the
7 credits that were somehow preventing
8 you from getting more payments for Bad
9 Girl, do you recall that?

10 MR. MALOFIY:

11 Objection.

12 THE WITNESS: Can I see
13 it. I don't --

14 BY MR. DAVIS:

15 Q. Sure, it is 394,
16 paragraph 394.

17 A. Hold on a second. I
18 want to take this off.

19 Q. Sure.

20 A. 394 okay. What is your
21 question?

22 Q. You mentioned in that
23 paragraph that the matter was tied up
24 with the attorneys trying to rectify

Page 484

1 the situation. Do you see that?

2 A. Yes.

3 MR. MALOFIY:

4 Objection.

5 THE WITNESS: Yes.

6 BY MR. DAVIS:

7 Q. What attorneys are you
8 referring to?

9 A. The -- I would assume
10 -- I can't say assume, but it was
11 HoriPro -- HoriPro, H-O-R-I, P-R-O, I
12 believe, HoriPro the publisher, our
13 publisher, and I guess whoever handles
14 the money on the other end, Sony. I
15 don't know.

16 Q. You guess?

17 A. Well, it has to be
18 another attorney because our attorney
19 was dealing with some other attorney
20 or HoriPro's attorneys.

21 Q. The word attorneys is
22 used there. Other than HoriPro can
23 you identify who the other attorneys
24 were, if any?

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1 MR. MALOFIY: He said
2 Sony.

3 THE WITNESS: That was
4 my recollection.

5 BY MR. DAVIS:

6 Q. Sony. Okay. Did you
7 ever try to contact those attorneys?

8 MR. MALOFIY:

9 Objection. You can answer.

10 THE WITNESS: No.

11 BY MR. DAVIS:

12 Q. The complaint alleges
13 that the money was in trust. Do you
14 see that?

15 A. Yes.

16 Q. Did you know where it
17 was in trust?

18 A. No.

19 Q. Did Dante Barton know
20 where it was in trust?

21 MR. MALOFIY:

22 Objection. You can answer if
23 you know what Dante Barton
24 knew.

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1 THE WITNESS: I just
2 know -- I just know what Dante
3 told me.
4 BY MR. DAVIS:
5 Q. What did Dante tell
6 you?
7 A. That --
8 Q. That it was in trust?
9 A. Yes.
10 Q. You didn't ask him if
11 he knew where it was in trust?
12 A. I trusted him.
13 Q. In paragraph 395 you
14 refer to industry executives. Do you
15 see that?
16 MR. MALOFIY:
17 30 minutes left.
18 MR. WILLIAMS: More
19 than that.
20 MR. MALOFIY: What do
21 you have on your clock?
22 MR. ROGERS: What
23 difference does it make. You
24 said that you are not going to

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1 hold us to the time and I have
2 questions also.
3 MR. MALOFIY: I'm not
4 going to cut it early on a
5 Friday because I have a date,
6 that is what I was saying. I
7 always have a date on Friday,
8 maybe a few, strapping young
9 lad.
10 THE WITNESS: Okay.
11 What is the question again?
12 BY MR. DAVIS:
13 Q. I asked you, do you see
14 where it refers to industry
15 executives?
16 A. Yeah.
17 Q. Okay. Did you ask Mr.
18 Barton who they were, those industries
19 executives?
20 A. No.
21 Q. So if you didn't know
22 who they were, because you didn't asks
23 Mr. Barton, is it accurate to say you
24 didn't try to contact them?

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1 A. Say that again.
2 MR. MALOFIY:
3 Objection. You can answer.
4 BY MR. DAVIS:
5 Q. You didn't ask Mr.
6 Barton who the industry executives
7 were, so you didn't know who to
8 contact if you wanted to contact them?
9 MR. MALOFIY:
10 Objection. You can answer.
11 THE WITNESS: Yeah, I
12 never tried to contact them.
13 MR. DAVIS: I'm going
14 to mark as Marino-14 a
15 one-page document which
16 appears to be a letter and it
17 has handwriting on it.
18 ---
19 (At this time a
20 document was marked for
21 identification as Exhibit No.
22 Marino-14.)
23 ---
24 MR. MALOFIY: Can I see

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1 it before you show it to the
2 witness.
3 MR. DAVIS: I have a
4 copy for you.
5 MR. MALOFIY: Thank
6 you. You are always good like
7 that. Thank you.
8 BY MR. DAVIS:
9 Q. Have you seen that
10 document before?
11 A. I have.
12 Q. Okay. Now this appears
13 to be similar to Marino-12, which I'm
14 showing you now. Do you see that?
15 A. Yes.
16 Q. But it's different
17 because it has additional handwriting
18 on it; is that correct?
19 MR. MALOFIY: Which one
20 are you looking at?
21 MR. DAVIS: Marino-12.
22 MR. MALOFIY: I'm
23 sorry. I got it. Thank you.
24 THE WITNESS: I see it.

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1 BY MR. DAVIS:

2 Q. Okay. Now, whose
3 handwriting is on the very top where
4 it says October/2007 and then it says,
5 Daniel Marino co-authored, co-produced
6 & co-owns, co-owners I think that
7 says?

8 A. Co-owns.

9 Q. Co-owns, quote, Club
10 Girl and Bad Girl, close quote?

11 A. What is the question?

12 Q. Who quote that?

13 A. I did.

14 Q. That's your
15 handwriting?

16 A. That is my handwriting.

17 Q. Is it your handwriting
18 for the line and X that appears below
19 that?

20 A. No.

21 Q. Okay. Do you recognize
22 what is written above that line?

23 MR. MALOFIY: Which
24 line?

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1 MR. DAVIS: The line
2 I've just described, where the
3 X is.

4 THE WITNESS: Yes.

5 BY MR. DAVIS:

6 Q. What is that?

7 A. Are you referring to
8 this line?

9 Q. Yes.

10 A. Yes. That is Dante
11 Barton, his signature.

12 Q. Okay. And is it your
13 testimony that he wrote the X, the
14 line and signed it?

15 A. He signed it. I don't
16 recall if he wrote the X and the line.
17 Could have been me or could have been
18 him, but he definitely signed it.

19 Q. Did you put the arrow
20 in there or did he put the arrow in
21 there or somebody else?

22 A. I don't remember --
23 well, it was just me and Dante, so I
24 don't know if I put the arrow or Dante

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1 put the arrow. It kind of looks like
2 my arrow.

3 Q. And can you tell me why
4 there is an arrow?

5 A. It's pointing down to
6 the Usher song Bad Girl.

7 Q. Right. Explain to me
8 the connection between the signature
9 line and the arrow to the second
10 paragraph of that letter?

11 A. I'm not quite sure.

12 Q. Okay. When did you --
13 when was this document with the
14 additional handwritten notes created?

15 A. It is dated at the top.

16 Q. Well, there is no date
17 there. It says what month it was that
18 was inserted there and the year, but
19 it doesn't have a date.

20 A. Yeah, I don't know.

21 Q. Can you describe for me
22 the circumstances surrounding this
23 document?

24 A. Yeah, it was me wanting

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1 more reassurance because more time had
2 gone past. And I showed this to
3 Dante, I said, look, you know, I
4 really would like for you to make me
5 feel better and sign this and say that
6 this is my song. And he said, yeah,
7 sure, it is your song, and he signed
8 it for me.

9 Q. Is there any reason you
10 wrote it on the letter that Simon J.
11 Rosen had drafted three years before?

12 MR. MALOFIY:

13 Objection. You can answer.

14 THE WITNESS: Yeah,
15 because I wanted him to know
16 that look, you know, I love
17 you, I trust you, but I really
18 don't want to have to pursue
19 anything like this, so please
20 reassure me that everything
21 that you are telling me is
22 true.

23 BY MR. DAVIS:

24 Q. Were you signaling to

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1 Mr. Barton that if he didn't sign it
2 you were going to sue him?

3 A. No.

4 Q. Well, I'm trying to
5 understand why you used Mr. Rosen's
6 letter for something that could have
7 been written on any piece of paper, if
8 you can explain that to me?

9 A. Let me read the letter
10 and then maybe I can remember why.

11 MR. MALOFIY: About
12 25 minutes.

13 MR. WILLIAMS: No, not
14 quite, more than that.

15 MR. MALOFIY: What do
16 you got? You got 40?

17 VIDEOGRAPHER: About
18 44.

19 MR. MALOFIY: 44,
20 honest to God?

21 THE WITNESS: I read
22 it. What was the question?

23 BY MR. DAVIS:

24 Q. The question was why

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1 co-owns Club Girl and Bad Girl?

2 A. You know, at the time
3 without having as much knowledge as I
4 do today, yeah.

5 Q. Where did you present
6 this letter to Mr. Barton?

7 A. In the studio.

8 Q. Okay.

9 A. We spent a lot of time
10 there.

11 Q. Was anyone else present
12 when you presented it to him?

13 A. No.

14 Q. Do you know where the
15 original is?

16 A. Is -- the original?

17 Q. The one with your
18 handwritten?

19 A. No, I don't recall.

20 Q. Did you possibly give
21 that to your lawyer who then copied it
22 and gave us copies of the original?

23 A. It is possible, I just
24 don't recall.

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1 you chose to make that notation on Mr.
2 Rosen's letter that was a draft that
3 was prepared three years before?

4 A. I guess for me it felt
5 like it was a confirmation that it
6 says up here in the first paragraph,
7 Mr. Marino co-authored, co-produced
8 and co-owned the master recording and
9 performed lead guitar on a song
10 entitled Club Girl. Mr. Marino
11 publishing entity co-administers and
12 co-owns publishing on Club Girl,
13 Usher's song Bad Girl. And I'm not a
14 lawyer, I'm not a writer in regards to
15 drafting legal documents or something
16 of some sort of a contract, so for me
17 this was assurance that everything
18 that it says here is true and then I
19 rewrote it up here and he confirmed
20 it.

21 Q. So you believed what
22 you had handwritten above his
23 signature was accurate, that Daniel
24 Marino co-author, co-produced and

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1 Q. Okay. When you, as you
2 say in the complaint, you confronted
3 Mr. Barton --

4 A. Excuse me. Let me
5 interrupt, go ahead.

6 Q. In the complaint you
7 say you confronted Mr. Barton, had you
8 already handwritten the notation on
9 the top before you confronted him?

10 A. I don't remember,
11 maybe, maybe while he was there. I
12 don't remember. You are asking me if
13 I wrote on the top of that letter
14 before I saw him.

15 Q. Yes.

16 A. Or while he was with
17 me?

18 Q. Before you saw him?

19 A. Repeat the question.

20 Q. Did you write that
21 notation on the top of Marino-14
22 before or during your meeting with Mr.
23 Barton?

24 A. I didn't understand you

Page 498

1 correctly. I don't remember.

2 Q. Okay. Did you have a
3 plan of what you were going to do if
4 he didn't sign the letter?

5 MR. MALOFIY:

6 Objection. You can answer.

7 THE WITNESS: No.

8 BY MR. DAVIS:

9 Q. Do you have any song
10 writing credits on any commercially
11 available recording?

12 A. Yes.

13 Q. What recordings,
14 please?

15 A. I guess you could
16 checkout the last one that went out.
17 Song writing you said?

18 Q. Yes.

19 A. Jessi Teich, is the
20 name of the artist. I can spell it
21 out for you if you like. It is Jessi,
22 J-E-S-S-I, and the last name Teich,
23 T-E-I-C-H. And what is interesting
24 that I would like to let you know

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1 about this particular album is that I
2 wrote and produced a lot of the songs
3 on the album, however, unlike Jim Jam
4 and Terry Lewis, even though we had an
5 agreement to split it 50/50 there were
6 songs on there that I didn't write and
7 I did not put a writers credit on
8 there, however the publishing came
9 through and we did split it 50/50. If
10 you recall Samuel went ahead and got a
11 credit on my song that I created on my
12 own that they stole from me and he got
13 a credit on the song and he admitted
14 in his deposition that he didn't do
15 anything to that song. Just like that
16 to be heard.

17 Q. Thank you. It is not
18 responsive to my questions.

19 A. But you should know.
20 It is not fair. It is not right. It
21 is completely wrong.

22 Q. You allege in the
23 complaint that Tommy Van Dell worked
24 with you, Wil Guice and Dante Barton,

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1 do you recall that?

2 MR. MALOFIY: I'm
3 sorry. I got distracted.
4 Could you repeat that
5 question?

6 THE WITNESS: I was
7 going to ask the same thing.

8 BY MR. DAVIS:

9 Q. You allege in your
10 complaint that Tom Van Dell worked
11 with you, Wil Guice and Dante Barton?

12 A. Correct.

13 Q. Okay. And when did
14 that working relationship begin?

15 A. Prior to flying down to
16 Nashville, and I guess that was in
17 2002, I believe. I'm not exactly
18 sure.

19 Q. What was his role?

20 A. Publisher.

21 Q. Right from the
22 beginning?

23 A. Well, you know, as far
24 as I know, yes, publisher.

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1 Q. Why do you say as far
2 as you know?

3 A. Because that's -- he
4 referred to himself as our publisher.
5 We referred to him as our publisher.
6 Publisher.

7 Q. Did you ever see an
8 agreement between yourself and his
9 company IN2N?

10 MR. MALOFIY:

11 Objection. Written or oral?

12 MR. DAVIS: Written.
13 How could you see an oral
14 agreement?

15 THE WITNESS: We had a
16 written agreement -- I mean an
17 oral agreement, not a written
18 agreement.

19 BY MR. DAVIS:

20 Q. Do you know what the
21 terms of that oral agreement were?

22 A. Well, it was a little
23 interesting because when we were on
24 our plane on the way back from

Page 502

1 Nashville he said -- because he had
 2 mentioned it down in Nashville how
 3 much he loved my playing, how much he
 4 loved the way I interacted with
 5 people, and how ease going I was
 6 playing with other people. And on the
 7 way back on the plane from Nashville
 8 we were sitting next to the each other
 9 and we were talking about, you know,
 10 signing us, is he signing us, and we
 11 started talking about what does that
 12 mean in regards to splitting
 13 publishing. He said, well, I get
 14 50 percent of the publishing, and I
 15 said, well, that's a little high,
 16 don't you think. And he said, not
 17 really. I said, well, you are just
 18 going to be making a few phone calls,
 19 and I don't think that entitles you to
 20 half of my publishing, I think
 21 seventy-five twenty-five would be more
 22 fair. And he said, that is fine,
 23 we'll work it out.

24 Q. Okay. We'll work it

Page 503

1 out, did there occur another
 2 conversation about it?

3 A. Other than him coming
 4 in the studio and asking me for more
 5 music every time he came in there, and
 6 I gave him CD's and loving it and
 7 trying to shop it around, which to me
 8 says, hey, I'm taking your music and
 9 I'm going to try to place it, to me
 10 that means, you know, he's okay with
 11 being my publisher.

12 Q. So based on his conduct
 13 by taking your music and you thinking
 14 that he was trying to place it with
 15 artists you presumed that he had
 16 accepted your terms, seventy-five
 17 twenty-five?

18 A. Yeah. He loved my
 19 music. He loved my playing. He loved
 20 the way I interacted with people. He
 21 would come in, play this song again, I
 22 love this song. There was this one
 23 song I wrote in Nashville with him
 24 that he loved so much that was an

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1 acoustic song that he mentioned that
 2 it sounded like Steve Nicks, Fleetwood
 3 MAC and -- yeah, and it was a really
 4 pretty song.

5 I'm just -- what I'm
 6 trying to say is that he really
 7 enjoyed my playing, and my writing and
 8 my production, and when he would come
 9 to the studio he would always ask me
 10 for a disk and I would give him a
 11 disk.

12 As a matter of fact,
 13 when we went through the documents I
 14 also found out that there was his
 15 artist, part of his publishing label,
 16 or whatever you call it, company that
 17 I wrote in Nashville with -- the
 18 girl's name is Bradshaw, Kate
 19 Bradshaw, and the other girl is there,
 20 the woman that wrote the song Kiss the
 21 Rain. We wrote a song. I recorded a
 22 song. I have a copy of the song when
 23 I wrote it with them, and, again, I
 24 never got properly credited.

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1 Q. But based on your
 2 course of dealing with him --

3 MR. MALOFIY: Another
 4 lawsuit. Another lawsuit.
 5 BY MR. DAVIS:

6 Q. -- you know, creating
 7 tracks -- creating tracks, giving them
 8 to Mr. Van Dell, you understood that
 9 the conversation that you had on the
 10 airplane --

11 A. Yeah.

12 Q. -- of a understanding
 13 of 75 percent to you, 25 percent to
 14 him or his company had been accepted
 15 by him?

16 A. They were.

17 Q. Orally?

18 A. When someone says to
 19 you, we'll work it out, here is my
 20 hand, shake it, to me that is an
 21 agreement. That is the way I was
 22 raised.

23 Q. That is what he did, he
 24 shook your hand?

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1 A. Yeah.
 2 Q. And he said, we'll work
 3 it out?
 4 A. Yeah.
 5 Q. Okay.
 6 MR. MALOFIY: Time to
 7 pack it up?
 8 BY MR. DAVIS:
 9 Q. Is there any way to
 10 estimate the number of times you saw
 11 Mr. Van Dell?
 12 A. No, I saw him a bunch
 13 of -- I mean, I can't estimate that.
 14 Q. Was it under 25 times?
 15 A. I couldn't say. It was
 16 a lot. I mean, I've known Tom from a
 17 good chunk of time during that course
 18 of the studio and I saw him, you know,
 19 a bunch of times.
 20 Q. There is no way that
 21 you can give me some range?
 22 A. I mean --
 23 MR. MALOFIY:
 24 Objection. I think he

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1 testified to it earlier.
 2 THE WITNESS: I did.
 3 And, you know, I testified
 4 about maybe I think seven
 5 times or so, five times or so
 6 he came in. I seen him a
 7 bunch of times in the studio.
 8 He would come, he would hang
 9 out with us.
 10 BY MR. DAVIS:
 11 Q. Did you see him after
 12 the Club Girl, Bad Girl song was
 13 released?
 14 MR. MALOFIY:
 15 Objection. Asked and
 16 answered.
 17 THE WITNESS: Yes.
 18 BY MR. DAVIS:
 19 Q. Did you see him more
 20 times after it was released or before
 21 it was released?
 22 A. I would say after.
 23 Q. After, and did you have
 24 Mr. Van Dell's telephone number?

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1 A. I don't think I did,
 2 no.
 3 Q. Did you know what
 4 company he worked for?
 5 A. Yes.
 6 Q. What was the name of
 7 the company?
 8 A. HoriPro.
 9 Q. And did you know where
 10 it was located?
 11 A. HoriPro is in
 12 Nashville. He took us to the studios
 13 where we wrote songs. He took us
 14 there to meet all the top executives.
 15 Q. So you knew how reach
 16 them?
 17 A. If I wanted to, I just
 18 had to ask Dante or Wil for his
 19 number. I just never had his number
 20 in my pocket.
 21 Q. Okay. But it was
 22 available if you needed it?
 23 A. If I needed it.
 24 Q. Did you have his e-mail

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1 address?
 2 A. Maybe. Maybe.
 3 Q. Do you remember ever
 4 telephoning him?
 5 A. Possibly.
 6 Q. Do you remember him
 7 ever telephoning you?
 8 A. I just can't recall.
 9 Q. Did Mr. Van Dell ever
 10 present you with any written contract
 11 at any time for you to consider and
 12 review for possible signature?
 13 MR. MALOFIY:
 14 Objection. You can answer.
 15 THE WITNESS: No.
 16 BY MR. DAVIS:
 17 Q. Did Mr. Barton or Mr.
 18 Guice ever show you the agreements
 19 that they had entered into with IN2N
 20 or HoriPro?
 21 MR. MALOFIY:
 22 Objection. You can answer.
 23 THE WITNESS: Did they
 24 ever show me their agreements

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1 with them?
 2 BY MR. DAVIS:
 3 Q. Yes.
 4 A. I don't think so.
 5 Q. Was the idea that you
 6 would each have separate agreements
 7 with Mr. Van Dell's company?
 8 MR. MALOFIY:
 9 Objection. You can answer.
 10 THE WITNESS: I
 11 wouldn't know.
 12 BY MR. DAVIS:
 13 Q. Well, did you think
 14 that Mr. Barton and Mr. Guice had the
 15 same deal that you had with the
 16 publisher 75/25?
 17 A. I don't know.
 18 Q. Did you ever get a
 19 statements from Mr. Van Dell's
 20 publishing company with respect to any
 21 of the works that you had presented to
 22 him?
 23 A. The only thing that I
 24 saw with my work presented on it was

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1 what we've gotten from HoriPro that I
 2 got an opportunity to see in Los
 3 Angeles. That is the only document
 4 that I saw with my work on it.
 5 Actually, there were
 6 other songs on there, too. There were
 7 songs that I wrote with Wil, that him
 8 and I had done that were on there as
 9 well.
 10 Q. You misunderstand my
 11 question. I'll repeat it.
 12 A. Okay. Go ahead.
 13 Q. Did you ever receive a
 14 statement from HoriPro or from IN2N
 15 which purported to account to you for
 16 anything with respect to the music
 17 that you had presented to Mr. Van Dell
 18 in these various occasions that you
 19 met with him?
 20 MR. MALOFIY:
 21 Objection. You can answer.
 22 THE WITNESS:
 23 Statement?
 24 BY MR. DAVIS:

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1 Q. A statement, royalty
 2 statement?
 3 A. You know, he would come
 4 in with his little briefcase when he
 5 did sometimes. I don't remember if he
 6 did or didn't.
 7 Q. Did he ever give you a
 8 list that identified the works that
 9 you had given to him for possible
 10 exploitation by his publishing
 11 company?
 12 A. No, we had -- no, I
 13 don't believe so.
 14 MR. DAVIS: I'll turn
 15 it over to you for a moment.
 16 I may have some follow up that
 17 I missed, and I'll check what
 18 I've got in my --
 19 MR. MALOFIY: It has to
 20 be responsive to his
 21 questions.
 22 MR. DAVIS: No, I'm
 23 giving him an opportunity to
 24 speak. I'm not done, but I

Page 513

1 want him to get his questions
 2 in and whatever time we have
 3 remaining I will utilize.
 4 MR. ROGERS: Thank you,
 5 Mr. Davis.
 6 ---
 7 EXAMINATION
 8 ---
 9 BY MR. ROGERS:
 10 Q. Mr. Marino, good
 11 evening. My name is Lance Rogers. We
 12 met yesterday for the first time. As
 13 I explained then I represent IN2N
 14 Entertainment Group, LLC, one of the
 15 defendants in this lawsuit.
 16 I know it has been a
 17 long day and I'll do my best to move
 18 this along. The same instructions
 19 that Mr. Davis supplied you at the
 20 beginning of this deposition apply for
 21 my questions. Do you understand that?
 22 A. Yeah. You said the
 23 beginning of today?
 24 Q. Yes.

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1 A. Was it the -- can you
2 just give me a quick fly by, reminder
3 what you meant by that?

4 Q. If you don't understand
5 my question will you let me know?

6 A. Oh, yeah. Yeah. Yeah.

7 Q. Okay. There was some
8 testimony earlier today that you
9 didn't receive any money from Destro.
10 I just wanted to follow up and ask
11 you, did you receive any money from
12 Underworld?

13 A. No, I don't believe I
14 received money from my own company.
15 No.

16 Q. What about Wavelab?

17 A. Wavelab, Wavelab, you
18 know, yes, actually.

19 Q. What did you receive
20 from Wavelab?

21 A. Wavelab, there was a
22 few years during Wavelab where we
23 decided to conduct classes, and those
24 classes were to teach Pro Tools. So

Page 515

1 what we did was we partnered up with
2 another individual who was a Pro Tools
3 expert, and we decided to invest some
4 money and buy a really nice Pro Tools
5 board, Control 24 I believe it was
6 called. And what we did is we held
7 some classes there, and what we did --
8 we only had a few classes, maybe like
9 four or five people in those classes.
10 And people would come in, I think
11 there was like maybe a two or
12 three-hour class or something like
13 that, and we advertised in the local
14 magazine. People would come in. We
15 would instruct them on how to use Pro
16 Tools, we would have different
17 sessions with them, show them how to
18 open sessions, how to close sessions,
19 how to record, how to route, how to
20 use the board. And there were very,
21 very, very -- when I say little
22 monies, maybe like -- I don't know, a
23 hundred dollars within the course of
24 possibly, I think we ran three classes

Page 516

1 in a couple months period.

2 Q. Other than those monies
3 did you receive any other monies from
4 Wavelab?

5 A. I don't think so, no.

6 Q. Okay. Yesterday when
7 we were deposing Mr. Guice we saw the
8 February 2012 statement that he
9 offered in this case. Do you recall
10 seeing that?

11 A. No, the February 2012
12 statement, do you have a copy of it?

13 Q. I do. I'm going to ask
14 you simply to let me know if you've
15 ever seen any other statements, ever,
16 that Mr. Guice has offered. This is
17 the statement that?

18 MR. MALOFIY: You mean
19 the affidavit which I referred
20 to?

21 BY MR. ROGERS:

22 Q. That might refresh your
23 recollection?

24 A. Oh, yes, if you said

Page 517

1 that I would have understood.

2 Q. Are you aware of any
3 other statements that Mr. Guice has
4 offered in this matter?

5 A. Not that I know of, no.

6 Q. Earlier today you
7 testified to an agreement between you
8 and Mr. Guice and Mr. Barton.

9 MR. MALOFIY:

10 Objection.

11 BY MR. ROGERS:

12 Q. What was that
13 agreement?

14 A. You know, you would
15 have to refresh my memory as to what
16 agreement you are talking earlier
17 today.

18 Q. Are you aware of any
19 agreements between yourself and Mr.
20 Guice and Mr. Barton?

21 A. Yes.

22 Q. What agreements are you
23 aware of?

24 A. The agreements that I

Page 518

1 had discussed with Mr. Davis earlier
2 where between the three of us the work
3 that we did together on the song
4 writing credits we would split one
5 third, one third, one third for the
6 song we did together.

7 Q. And you testify about
8 that. My apologies.

9 Are you aware of any
10 other agreements between the three of
11 you?

12 MR. MALOFIY:

13 Objection. You can answer.

14 THE WITNESS: No.

15 BY MR. ROGERS:

16 Q. What was the point --
17 there has been testimony in this case
18 that you gave that at some point you
19 had to make a decision between giving
20 the song Club Girl to Usher to use or
21 to have Mr. Guice use the song Club
22 Girl; is that correct?

23 A. Yes.

24 Q. What was the point in

Page 519

1 giving it to Usher to use?

2 A. I think that's pretty
3 obvious. The idea to give it to Usher
4 is that Usher is a well established
5 artist and it would not necessarily
6 mean guaranteed success but a good
7 chance for success, but with that
8 being said it is all speculating,
9 because with Wil Guice if we were to
10 release it with a single and if Mark
11 Pitts took him as a single as the
12 artist, you know, the potential is
13 unlimited. He could have been the
14 next big super star himself, and the
15 song could have been very successful.
16 So, you know, that's -- that was, the
17 decision was between giving it to Wil
18 let him keep it for himself as a
19 single. Let him roll with Mark Pitts,
20 as you heard in Wil's testimony
21 yesterday, he had that opportunity,
22 and instead it went to Mr. Usher.

23 Q. Before the Confessions
24 album was released, other than Mr.

Page 520

1 Barton, did you talk to anybody about
2 ownership or credit for the song Club
3 Girl or Bad Girl?

4 MR. MALOFIY:

5 Objection. Can you read that
6 back? I lost that one. I
7 apologize.

8 - - -

9 (At this time the court
10 reporter read back from the
11 record as was requested.)

12 - - -

13 MR. MALOFIY:

14 Objection. You can answer.
15 It was asked and answered.

16 THE WITNESS: I'm
17 sorry. I'm so sorry. I just
18 passed him the paper and I
19 didn't catch the second half
20 of it.

21 - - -

22 (At this time the court
23 reporter read back from the
24 record as was requested.)

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1 - - -

2 THE WITNESS: Before
3 the release?

4 MR. MALOFIY:

5 Objection. Asked and
6 answered. Go ahead.

7 THE WITNESS: I'm just
8 getting tired. I don't
9 recall.

10 MR. MALOFIY: Do you
11 need a break? We'll stop the
12 time obviously if you need a
13 break.

14 BY MR. ROGERS:

15 Q. Do you need a break?

16 A. Yeah, I wouldn't mind.
17 I'm just, like, fading. I might go
18 get a cup of coffee. Is that coffee
19 machine still going there. I barely
20 slept last night.

21 Q. Let's take a break.

22 VIDEOGRAPHER: The time
23 is now 7:54 p.m. We are going
24 off the record.

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1 - - -
2 (At this time a short
3 break was taken.)
4 - - -

5 VIDEOGRAPHER: The time
6 is now 8:05 p.m. We are back
7 on the record.

8 MR. MALOFIY: We are
9 just going to put something on
10 the record. It's not going to
11 count against your time. I
12 just want to put something on
13 the record. Do you want to
14 put your time concern on the
15 record?

16 MR. ROGERS: I don't
17 know. But let's hear what he
18 has to say.

19 MR. MALOFIY: Can you
20 estimate how much time you
21 think you may need with this
22 witness?

23 MR. ROGERS: I don't
24 know. I'm just trying to get

Page 523

1 through all this as quickly as
2 possible. As you know, I just
3 got the witness about ten
4 minutes ago.

5 MR. MALOFIY: I'm just
6 going to put on the record
7 that I don't believe defense
8 counsel properly allocated
9 their time of what questions
10 they should ask and how they
11 should ask it, and because of
12 that, because they asked the
13 same questions over and over
14 and over and over and over and
15 over again at nauseam that we
16 are not going to call this guy
17 back. The discovery deadline
18 is on the 8th. We'll object
19 to that.

20 So I'm going to try to
21 be as considerate and
22 conscientious as I can be, as
23 patient and courteous. And in
24 you asking your questions, at

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1 the same time my client is
2 exhausted and tired, so do
3 your best to ask questions
4 that have not been answered --
5 or questions that have not
6 been asked or answered and
7 I'll try to work with you
8 guys.

9 MR. DAVIS: I have a
10 couple more, so I won't keep
11 him long.

12 MR. MALOFIY: Dan, how
13 do you feel?

14 THE WITNESS: Like
15 shit.

16 MR. MALOFIY: Are you
17 exhausted. You are on camera.
18 You don't want to do that.

19 THE WITNESS: I'm
20 sorry. I forgot we were on
21 the air.

22 BY MR. ROGERS:

23 Q. Mr. Marino, are you
24 able to proceed? I have some more

Page 525

1 questions for you. Are you able to
2 answer those questions?

3 A. Yes.

4 Q. Okay. If at any time
5 you aren't able to answer them
6 truthfully, honestly and accurately
7 will you please let me know?

8 A. Sure.

9 Q. All right. Just before
10 we broke you were giving me an answer
11 to a question. I would like to the
12 ask the court reporter to read that
13 answer back.

14 - - -

15 (At this time the court
16 reporter read back from the
17 record as was requested.)
18 - - -

19 BY MR. ROGERS:

20 Q. That is what I was
21 trying to figure out. Did you hear
22 the question, Mr. Marino?

23 A. Yes, I think I got it.

24 One more time. Sorry.

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1 Q. Let me see if I can
2 simplify it. Before Confessions was
3 released as an album?

4 A. Yes. Yes.

5 Q. Other than Mr. Barton
6 did you talk to anybody about
7 ownership or receiving money from the
8 release the song Bad Girl or Club
9 Girl?

10 MR. MALOFIY:

11 Objection, but you can answer.

12 THE WITNESS: Yes,
13 before the release of the
14 record I worked on my song
15 Club Girl with other people
16 who knew that I was the sole
17 author of that recording,
18 including Jimmy Jam, Terry
19 Lewis -- or I'm sorry, Terry
20 Lewis, apparently Jimmy Jam
21 got a credit that he should
22 have never gotten, Terry
23 Lewis, I guess the Avila
24 brothers.

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1 BY MR. ROGERS:

2 Q. Let me jump in here. I
3 don't mean to interrupt you but I
4 think you are answering a different
5 question. I want to save you the
6 concentration and hassle of doing
7 that.

8 A. I understand --

9 MR. MALOFIY: I ask
10 that you allow him to finish
11 his answer. You asked him
12 about ownership of the song
13 and he is answering that.

14 THE WITNESS: You said
15 ownership of the song. So
16 those people know, Dante, Wil,
17 the people that worked on --
18 prior to the record release I
19 did all the revisions with
20 these people. Tommy Van Dell
21 also knew about it. So all
22 these people knew that I
23 originated the song, I created
24 the song, I wrote the song, I

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1 produced the song and then I
2 also was writing the revisions
3 for the song.

4 BY MR. ROGERS:

5 Q. I'm not asking about
6 who knew about what you did on the
7 song. What I'm asking you is, did you
8 have any conversations with anyone
9 other than Mr. Barton about your
10 ownership interest in the song Club
11 Girl or Bad Girl prior to the release
12 of Confessions?

13 MR. MALOFIY:

14 Objection. Asked and
15 answered, repeatedly.

16 THE WITNESS: Yeah, I
17 feel like that is the same,
18 what I just said is the same.

19 MR. MALOFIY: We are
20 probably just going to shut
21 this down unless you ask some
22 real questions. This is
23 ridiculous.

24 THE WITNESS: Right, I

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1 mean, isn't that -- they know
2 about the ownership.

3 MR. MALOFIY: He just
4 testified.

5 BY MR. ROGERS:

6 Q. I'm not asking you
7 about who knew about ownership. What
8 I'm asking you is, did you, Daniel
9 Marino, have any conversations with
10 anyone other than Mr. Barton about the
11 ownership of Club Girl or Bad Girl
12 prior to the release of Confessions?

13 MR. MALOFIY:

14 Objection. Asked and
15 answered. The witness is
16 obviously tired and this is
17 the same question that has
18 been asked 50,000 different
19 ways. This is an ineffective
20 use of your time. This is an
21 ineffective use of my time.
22 Everyone here is tired. My
23 client is tired. You guys
24 asked the same question over

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1 and over and over again, and
2 you haven't properly allocated
3 your time, and now you want to
4 ask him it again.

5 I'm trying to be as
6 patient and courteous but I
7 would have never let this go
8 on if the discovery deadline
9 wasn't the 8th, and I want to
10 be fair and respectful of your
11 questions, but it is the same
12 question. He is tired and he
13 answered it a million times.

14 MR. ROGERS: You're
15 filibustering. Let him answer
16 the question.

17 THE WITNESS: Lance --
18 Lance, right?

19 BY MR. ROGERS:

20 Q. Yes.

21 MR. MALOFIY: Call him
22 Mr. Rogers.

23 THE WITNESS: Mr.
24 Rogers. I'm sorry. In 2001

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1 when I wrote the song,
2 produced the song, no one ever
3 disputed that I didn't write
4 the song Club Girl. The 2002
5 I wrote -- no one ever
6 disputed that I wrote the
7 song, I produced the song Club
8 Girl. In 2003 prior to the
9 release no one ever disputed
10 that I wrote the song,
11 produced the song Club Girl.
12 When the record came out in
13 2004 no one ever disputed that
14 I wrote the song and produced
15 the song Club Girl. In 2005
16 no one ever disputed that I
17 wrote the song, that I
18 produced the song Club Girl
19 and Bad Girl. In 2006 no one
20 has yet come up and said
21 anything with any dispute that
22 I wrote the song and produced
23 the song the Club Girl and Bad
24 Girl. Again, in 2007 no one

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1 ever disputed the fact that I
2 wrote and produced song Club
3 Girl and Bad Girl. In 2008 no
4 one ever disputed the fact
5 that I wrote and produced the
6 song Club Girl. 2009 no one
7 ever disputed that I wrote and
8 produced the song Club Girl.
9 In 2010 no one has ever come
10 here and disputed the fact
11 that I wrote and produced the
12 song Club Girl. Again, in
13 2011 no one has made any
14 disputes that I am the person
15 that wrote, produced the song
16 Club Girl and Bad Girl. Last
17 year in 2012 no one disputed
18 that I wrote and produced the
19 song Bad Girl and Club Girl.
20 And now we are in 2013, we are
21 at depositions. We went
22 through all these depositions.
23 We went to L A, we went
24 everywhere. Mr. Davis can

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1 tell you that no one has come
2 here and disputed the fact
3 that I wrote, and produced the
4 song Club Girl, Bad Girl.
5 Now you are asking me,
6 Mr. Rogers, did I have any
7 conversations with someone
8 about credits in 2003. No one
9 has ever disputed the fact
10 that I wrote and produced the
11 song Bad Girl. So I just
12 don't understand why that
13 question keeps coming up. If
14 no one else has said this man
15 has not -- he is not the guy
16 that did it, I did it or
17 someone else, or I know the
18 person then why are we even in
19 this room, and you guys are
20 defending these people that
21 stole my song. Like, aren't
22 we trustworthy people? Like I
23 feel like I look at look you
24 guys and you look like honest

Page 534

1 people, but on the back end I
2 don't feel like I can trust
3 you guys at all.

4 BY MR. ROGERS:

5 Q. Mr. Marino, are you
6 able and willing to answer my
7 questions?

8 MR. MALOFIY: He did.
9 He did answer all your
10 questions for eight hours now.
11 You keep on asking these
12 questions and you keep on
13 getting the same question over
14 and over again.

15 MR. DAVIS: Francis, we
16 got your rap. We know what
17 you are saying.

18 MR. MALOFIY: I'm going
19 to shut it down.

20 MR. DAVIS: I have a
21 few questions left to do. I
22 want --

23 MR. MALOFIY: I'm about
24 to shut it down. Ask your

Page 535

1 question.

2 BY MR. ROGERS:

3 Q. Mr. Marino, if we need
4 to recall this deposition on another
5 day, I'm happy to do that, if you are
6 not feeling up to answering these
7 questions?

8 A. Maybe we will he do
9 that.

10 MR. DAVIS: I want to
11 finish the few that I have.

12 MR. MALOFIY: Do you
13 have any important questions
14 that haven't been asked?

15 BY MR. ROGERS:

16 Q. Are you able to
17 continue in this deposition on another
18 day?

19 A. No.

20 MR. MALOFIY: No, he is
21 not.

22 MR. DAVIS: I'm ready
23 to finish my question with
24 you. I'm going to finish.

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1 MR. MALOFIY: That is
2 fine, before you jump back in
3 with the same questions with
4 the same answers that is going
5 to happen over and over again,
6 do you have additional
7 questions you would like to
8 ask him that haven't been
9 asked as of yet, Mr. Rogers?

10 MR. ROGERS: I have
11 more questions, Mr. Marino.
12 I'm happy to have him answer
13 them or we can adjourn this
14 deposition right now and we
15 can continue tomorrow or next
16 week at some point.

17 MR. MALOFIY: No, that
18 is not going to happen.

19 BY MR. ROGERS:

20 Q. I don't have very many
21 questions for you, but I would like to
22 get through them tonight.

23 A. I get frustrated with
24 the same questions, and the fact that

Page 537

1 no one is disputing anything that I
2 say. No one is disputing the fact
3 that I wrote and produced the song,
4 the song that was stolen from me that
5 people made -- the record itself
6 generated over \$200 million or so.
7 And you guys are fighting this. Like,
8 you all know at this point. I just
9 don't understand it. I want to answer
10 your questions, but if it is going to
11 be the same question you just asked me
12 I answered it.

13 MR. ROGERS: I'm going
14 to reserve my right to ask
15 that question again. I'm
16 going to move on.

17 THE WITNESS: Okay.

18 BY MR. ROGERS:

19 Q. Mr. Marino, I think
20 earlier you indicated that you believe
21 that the defendants in this case have
22 lied to you. That was your testimony.
23 How did my client, defendant IN2N
24 Entertainment Group lie to you?

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1 A. He lied to me because
2 he told me he was going to be my
3 publisher and I don't really know what
4 happened, obviously he lied.

5 Q. And who is he?

6 A. Tommy Van Dell.

7 Q. And you don't think
8 that he was your publisher?

9 MR. MALOFIY: No, that
10 is not what he said.

11 THE WITNESS: He was --

12 I think he was my publisher.

13 I always thought he was my
14 publisher. Clearly in his
15 deposition he told me he was
16 not my publisher.

17 BY MR. ROGERS:

18 Q. Earlier you testified
19 about defendant stealing your song?

20 A. Yes.

21 Q. How did defendant IN2N
22 Entertainment Group steal your song?

23 A. They collected money on
24 my song on behalf of IN2N

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1 Entertainment. They made money.
2 Tommy Van Dell knew about me. We've
3 had ongoing communications. He knew
4 who I was. We've had conversations
5 about me being a part of his
6 publishing company, him being my
7 publisher, and he, without my
8 knowledge, collected publishing money
9 and kept it, which he said he didn't
10 make any money, but I don't know how
11 that happened.

12 Q. When did you come to
13 the conclusion that IN2N stole your
14 song?

15 A. I'm not really quiet
16 sure when I came to that conclusion.

17 Q. When did you come to
18 the conclusion that Usher stole your
19 song?

20 A. I'm going to say that I
21 came to the conclusion sometime around
22 2009.

23 MR. MALOFIY: Again,
24 these are all the same

Page 540

1 questions that have been asked
2 and answered. I mean it is
3 over and over and over and
4 over again.

5 MR. ROGERS: You are
6 just drawing this out.

7 MR. MALOFIY: Well,
8 we'll shut it down.

9 MR. ROGERS: You are
10 just drawing it out.

11 MR. DAVIS: Francis,
12 please, let him finish.

13 MR. MALOFIY: Because
14 the judge is going to laugh at
15 this.

16 MR. DAVIS: Francis,
17 please, let him finish so I
18 can finish.

19 MR. MALOFIY: I'm
20 trying.

21 MR. DAVIS: But if you
22 would stop talk.

23 MR. MALOFIY: Just ask
24 questions that haven't been

Page 541

1 asked before. It is that
2 simple. We has been here --

3 MR. DAVIS: He can use
4 his time the way he chooses.
5 Okay. Please, can we just
6 finish.

7 MR. MALOFIY: You lost
8 Guice, you are going to lose
9 this guy, too.

10 MR. ROGERS: When you
11 say -- well, forget it.

12 BY MR. ROGERS:

13 Q. Mr. Marino, you claim
14 that you originally wrote the song
15 Club Girl; is that correct?

16 A. Yes.

17 Q. When you wrote the song
18 what was it originally called?

19 A. Club Girl.

20 Q. Was it you that came up
21 with the lyrics for the song?

22 A. I came up with the
23 concept and some of the lyrical
24 content.

Page 542

1 Q. How was it called Club
2 Girl?

3 A. I decided to call it
4 Club Girl because that is what I
5 decide to call the song.

6 Q. Why did you decide to
7 use the words Club Girl or the name
8 Club Girl?

9 A. I was at home when I
10 was writing the song. There was a
11 video or something, and I thought to
12 myself I want to get me one of them,
13 that is how I came up with the -- and
14 saw that on the screen, and it is Club
15 Girl. They were in a club dancing.
16 That is how I came up with the song
17 Club Girl.

18 Q. Is it fair to say that
19 the song was then named before the
20 lyrics were developed?

21 A. That was in the process
22 of being developed. I mean, you know,
23 writing a song sometimes they are in
24 stages. It could take -- I mean, I

Page 543

1 can write a song sometimes, seriously,
2 in ten minutes. I've had it done.
3 Sometimes it will take me a month to
4 get a song done, sometimes it is never
5 done.

6 Q. But did you name the
7 song before the lyrics were added?

8 MR. MALOFIY:

9 Objection.

10 THE WITNESS: I
11 added --

12 MR. MALOFIY: You can
13 answer.

14 THE WITNESS: What I'm
15 trying to say is I came up
16 with some of the lyrics as I
17 was playing my guitar. That
18 is where I said Club Girl, and
19 Club Girl stuck, until Usher
20 decided to change it and call
21 it Bad Girl.

22 BY MR. ROGERS:

23 Q. Did you add any other
24 lyrics other than the words club and

Page 544

1 girl to the song?

2 A. I added many of the
3 lyrics. I worked with Wil on it.

4 Q. What, if anything, did
5 you do to prepare for today's
6 deposition?

7 A. What did I do? I did
8 -- I sat down and I looked at the Pro
9 Tools files that you guys provided us
10 with or I don't know who, and I talked
11 to Francis and he told me to come here
12 and just be honest.

13 Q. Did you do anything
14 else?

15 A. That was it.

16 Q. Did you look at any
17 other files?

18 A. No.

19 Q. How did you come to
20 retain Mr. Malofiy to represent you in
21 that matter?

22 A. Interesting story.

23 MR. MALOFIY:

24 Objections. You don't have to

Page 545

1 get into any communications
2 with us.

3 THE WITNESS: Well, it
4 is not communications. How we
5 met you said?

6 BY MR. ROGERS:

7 Q. That is what I'm
8 asking.

9 A. There is a place that I
10 get my equipment fixed at. Actually,
11 Dante introduced me to this place
12 called Pro -- that is where I work.
13 I'm sorry. Pro Digital is the name of
14 the place, and it's where a guy that
15 fix music equipment. He fixes TVs,
16 fixes keyboards, all kinds of stuff.
17 And this gentleman where I would go to
18 with Dante and sometimes on my own
19 found out that the situation occurred,
20 and Francis also gets his equipment
21 fixed there as well, and he decided to
22 introduce us, and that is how I got to
23 meet Francis Malofiy.

24 MR. ROGERS: All right.

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1 I'm going to turn the
2 deposition back over to Mr.
3 Davis to wrap up. Thank you.

4 - - -

5 EXAMINATION

6 - - -

7 BY MR. DAVIS:

8 Q. Mr. Marino, I'm going
9 to show you what has been marked
10 Marino Exhibit 15. I'm going to hand
11 your counsel a copy as well.

12 MR. MALOFIY: Thank
13 you.

14 THE WITNESS: Marino
15 Exhibit 15.

16 - - -

17 (At this time a
18 document was marked for
19 identification as Exhibit No.
20 Marino-15.)

21 - - -

22 BY MR. DAVIS:

23 Q. This document has been
24 produced in the course of discovery in

Page 547

1 this case. Have you ever had a chance
2 to look at this agreement?

3 A. I have to look at it
4 for a few minutes to recognize what it
5 is. Did this come from us?

6 Q. No. This is a document
7 that we produced.

8 A. Oh, I'm sorry, you said
9 that. I'm tired, man.

10 Q. I know, that is okay.

11 A. Okay. Do I recognize
12 this?

13 Q. Maybe I can help you a
14 little bit. It is an agreement
15 between Fast Pace, Inc., and
16 Underworld Entertainment, your
17 company.

18 A. Okay.

19 Q. And it's dated as of
20 February 1st, 2004. Do you see that
21 at the top of the first page?

22 A. Yes.

23 Q. Now, Underworld
24 Entertainment was the company that you

Page 548

1 were a co-owner of?

2 A. That's correct.

3 Q. And that you were CEO
4 of?

5 A. Like I said, we talked
6 about it. Yes, I'm an owner of
7 Underworld Entertainment.

8 MR. MALOFIY:

9 Objection. I know he is
10 tired. Objection.

11 BY MR. DAVIS:

12 Q. As reflected in your
13 resume you show yourself as the Chief
14 Executive Officer of Underworld
15 Entertainment?

16 MR. MALOFIY:

17 Objection.

18 BY MR. DAVIS:

19 Q. And I think you may
20 have testified you are co-CEO with
21 Dante Barton?

22 A. I don't recall saying
23 co-CEO. I don't know what that means.

24 Q. Well, let's just

Page 549

1 quickly look for your resume again?

2 A. Please do. You said
3 co-CEO?

4 MR. MALOFIY: This is
5 just so silly.

6 BY MR. DAVIS:

7 Q. Well, I think you
8 testify to it, but in the resume you
9 say you are the CEO?

10 A. Okay.

11 Q. All right. This is a
12 contract with your company?

13 MR. MALOFIY:

14 Objection.

15 BY MR. DAVIS:

16 Q. Is it your position
17 that you are a beneficiary as a
18 co-owner of any contracts that are
19 entered into by Underworld
20 Entertainment?

21 MR. MALOFIY:

22 Objection.

23 THE WITNESS: No, I
24 have not received anything.

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1 I'm just saying -- you asked
2 me a question, right, your
3 question is?

4 MR. MALOFIY: Wait
5 until I object. Objection.
6 This is a legal question.
7 There is a lot of terms that
8 you used. It's confusing.

9 THE WITNESS: Yeah, I'm
10 not quite following you.

11 MR. MALOFIY: This man
12 is tired and it's late in the
13 day.

14 MR. DAVIS: Would you
15 read back the question?

16 MR. MALOFIY: You are
17 using a lot of legal-- I
18 couldn't even answer that
19 questions. I couldn't answer
20 it if I wanted to.

21 ---

22 (At this time the court
23 reporter read back from the
24 record as was requested.)

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1 ---

2 BY MR. DAVIS:

3 Q. I'll try to make it
4 simpler for you.

5 MR. MALOFIY:

6 Objection.

7 BY MR. DAVIS:

8 Q. If Underworld enters
9 into a contract with a third party
10 while you are a owner of that company
11 with Dante Barton do you think you are
12 entitled to the benefits of whatever
13 that contract is?

14 MR. MALOFIY:

15 Objection.

16 THE WITNESS: I really
17 don't know.

18 BY MR. DAVIS:

19 Q. You don't know?

20 MR. MALOFIY: I think
21 he is tired, it is obvious.

22 THE WITNESS: I don't
23 know.

24 MR. MALOFIY: Are you

Page 552

1 tired?

2 THE WITNESS: Right
3 now, I'm exhausted.

4 BY MR. DAVIS:

5 Q. Is that a contract --

6 A. Mr. Davis, you just
7 handed me this contract, and I believe
8 this is the first time I'm looking at
9 it. And I hear what you are saying,
10 but I would need some time to look at
11 it, read it and I don't know because
12 I'm not a lawyer.

13 Q. I'll ask you a more
14 general question. If Underworld
15 Entertainment enters into a contract
16 during the period that you are a
17 co-owner of that company, and I think
18 you testified that was up to about
19 2009 when Mr. Barton disappeared,
20 according to your complaint, do you
21 think you are entitled to the
22 benefits, you know what benefits are,
23 of contracts entered into by the
24 company you co-owned with Mr. Barton?

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1 MR. MALOFIY:

2 Objection.

3 THE WITNESS: I really
4 don't --

5 MR. MALOFIY: Hold on.
6 Wait. Objection. The witness
7 is tired. You are asking
8 legal questions and I'm going
9 to ask him to answer it as
10 best you can.

11 MR. DAVIS: That's
12 fine.

13 MR. MALOFIY: All
14 right.

15 THE WITNESS: I'm going
16 to be honest with you, Mr.
17 Davis, I don't know how to
18 answer the question, and I'm
19 going to be honest with you
20 why, because I feel like you
21 are being tricky with this
22 question and I don't trust
23 you, and I don't know how to
24 answer that. So I don't know

Page 554

1 how to answer your question.

2 BY MR. DAVIS:

3 Q. Well, I'll ask you
4 another question. Do you think that
5 there are contracts that you get to
6 participate in that Underworld enters
7 into and others that you don't, even
8 though you are a co-owner?

9 A. I really don't know how
10 to answer the question.

11 Q. Okay. Look at page,
12 the Bates stamp is SME ten. Do you
13 see in the middle of the page it says,
14 agreed and accepted Underworld
15 Entertainment, by, and then it says
16 authorized signature?

17 MR. MALOFIY:

18 Authorized.

19 BY MR. DAVIS:

20 Q. Signatory?

21 A. I don't see it. Can
22 you point it out?

23 Q. Sure. Right there.

24 A. Okay. I see it.

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1 Q. And Underworld
2 Entertainment is your company, isn't
3 it?

4 MR. MALOFIY:

5 Objection.

6 BY MR. DAVIS:

7 Q. With Dante Barton, at
8 least up until 2009?

9 MR. MALOFIY:

10 Objection. You can answer.

11 THE WITNESS: It was.

12 BY MR. DAVIS:

13 Q. And you were an equal
14 shareholder with Mr. Barton, and we
15 looked at another document that showed
16 that Underworld Entertainment is a
17 corporation?

18 MR. MALOFIY:

19 Objection. To be clear, just
20 because a document states it
21 is a corporation doesn't mean
22 it is a corporation. It
23 speaks for itself. He also
24 said he doesn't know the

Page 556

1 business intricacies of what
2 you are talking about. Now
3 you are trying to play fast
4 and loose and try to trick the
5 man.

6 MR. DAVIS: I'm not
7 trying to trick anybody.

8 MR. MALOFIY: Ask you
9 your questions. All right.
10 He already said -- you are
11 trying to establish something
12 as fact because it says it on
13 an agreement. You can't do
14 that.

15 BY MR. DAVIS:

16 Q. Mr. Marino, you were a
17 50 percent co-owner with Mr. Barton in
18 Underworld Entertainment; is that
19 correct?

20 A. Listen --

21 Q. Is that correct?

22 A. I worked with Dante
23 Barton, and we started a company
24 called Underworld Entertainment. And

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1 if he is signing something without my
2 knowledge and he was being deceitful,
3 I don't know. I really don't even
4 understand the question, but all I can
5 say is that had I known the song was
6 going to get stolen from me -- okay,
7 if I knew that he is signing something
8 on behalf of my company that was being
9 stolen from me by your defendants, I
10 would never have authorized this.

11 Q. If you benefited from
12 that --

13 A. That is my answer.

14 Q. If you benefited from
15 that contract in the same way that Mr.
16 Barton did, wouldn't you agree that if
17 he signed on behalf of Underworld
18 Entertainment you would get the
19 benefits of that contract?

20 MR. MALOFIY: *

21 Objection. You don't have to
22 answer that.

23 THE WITNESS: I don't
24 understand.

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MR. MALOFIY: Hold on.
Objection. Calls for
speculation. Calls for a
legal opinion, and you are
asking him if the dog didn't
stop to take a -- you know,
that whole route.

MR. DAVIS: Is that
your objection?

MR. MALOFIY: That is
my objection, yeah.

BY MR. DAVIS:

Q. Is it your contention
that contracts entered on behalf of
Underworld Entertainment during the
period of time in which you were a
co-owner weren't contracts --

A. One more time. Can you
keep it shorter? My attention span is
shot. I'm really tired.

Q. If Underworld
Entertainment, a company that you
co-owned with Mr. Barton, enters into
a contract --

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MR. MALOFIY:
Fraudulent contract.

BY MR. DAVIS:

Q. -- do you believe that
you are entitled to the same benefits
as your partner, Mr. Barton, with
respect to that contract?

A. I don't -- I can't
answer this question. I don't know.
I just don't know. I don't know the
legalities of contracts and you are
asking me -- I'm not an attorney.

Q. You do know you were a
co-owner of Underworld Entertainment?

A. I know that I would
have never authorized my song that I
wrote and produced on my own to be
used anywhere with anyone unless I was
properly credited, bottom line. That
is my answer.

Q. Between --

A. You are being tricky.
Man, like I don't -- you keep going to
the same things, because you want an

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answer from me.

Q. I'm not doing that, and
you know that, Mr. Marino.

A. No, I do know.

Q. Your lawyer coached you
to say that throughout the course of
these depositions.

A. No. No. I completely

--
MR. MALOFIY: Now I
object to that. No. No. You
can't say your lawyer coached.

BY MR. DAVIS:

Q. Mr. Marino --

A. Is my seven hours up?

MR. MALOFIY: It has
been up.

THE WITNESS: I'm done.
I'm tired.

BY MR. DAVIS:

Q. I am going to finish my
questioning. In 2004 did you bring an
action against any of these
defendants?

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MR. MALOFIY: I'm going
to stop here. Just for the
record, he said I coached him.
He said a lot of things that
are improper. That is a bunch
of BS. If you have some facts
of that, you bring them to the
table, but don't give me
claptrap.

MR. DAVIS: You like
that word.

BY MR. DAVIS:

Q. In 2004 did bring an
action against any of the defendants,
a lawsuit?

A. In 2004?

Q. Yes.

A. No.

Q. And you knew that the
album Confessions, which included Club
Girl, Bad Girl was being sold; is that
correct?

MR. MALOFIY:
Objection.

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1 THE WITNESS: I knew
2 about it, of course I did.
3 BY MR. DAVIS:
4 Q. In 2005 you didn't
5 bring a lawsuit against those
6 defendants?
7 A. No.
8 Q. In 2006 you didn't
9 bring a lawsuit against those
10 defendants, is that true or false?
11 A. I'm thinking. I'm
12 tired. I'm like ready to fall asleep
13 right know.
14 Q. I think you would know
15 if you brought a lawsuit in 2006?
16 A. Yeah. No, I didn't.
17 Q. Okay. And you knew
18 that the album was being sold in 2006;
19 is that correct?
20 A. I would have brought a
21 lawsuit if I knew that my song was
22 stolen from me. I would have, but I
23 didn't know.
24 Q. You didn't bring --

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1 A. I was being lied by
2 your people the whole time.
3 Q. You didn't --
4 A. Otherwise I would have,
5 and we wouldn't be at this table right
6 now.
7 MR. MALOFIY: I think
8 you are asking the same thing.
9 THE WITNESS: This is
10 the same thing.
11 BY MR. DAVIS:
12 Q. You didn't bring a
13 lawsuit in 2006, did you?
14 MR. MALOFIY: Do you
15 need --
16 THE WITNESS: You know
17 when I brought the lawsuit.
18 You are asking me questions
19 you know the answers to.
20 BY MR. DAVIS:
21 Q. So between 2006 and
22 2011 there was no lawsuit brought
23 until November of that year?
24 MR. MALOFIY:

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1 Objection.
2 BY MR. DAVIS:
3 Q. Is that correct?
4 MR. MALOFIY: He might
5 not know when the lawsuit was
6 actually filed and we are not
7 going to go down this road.
8 MR. DAVIS: October --
9 MR. MALOFIY: The
10 record speaks for itself.
11 MR. DAVIS: You are
12 interrupting.
13 MR. MALOFIY: No. No.
14 Where are we at on time, sir?
15 VIDEOGRAPHER: We have
16 approximately 15 minutes on
17 left on this DVD, but we are
18 seven hours and six minutes.
19 MR. DAVIS: Okay. I'm
20 going to wrap it up in two
21 minutes, okay, if you won't
22 interrupt me.
23 MR. MALOFIY: I'm
24 trying to be fair here.

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1 BY MR. DAVIS:
2 Q. In 2007 you didn't
3 bring an action against any of these
4 defendants, did you?
5 A. No.
6 Q. And you knew that the
7 Confessions album was being sold; is
8 that correct?
9 MR. MALOFIY:
10 Objection, asked and answered.
11 THE WITNESS: What I
12 didn't know, was I was being
13 rooked. What I didn't know
14 was that all the people that
15 you are working for that you
16 are getting paid from stole my
17 song. You're working with
18 them who stole my song. There
19 still hasn't been anyone here
20 today that can say I didn't
21 write the song, but you keep
22 asking me questions you know
23 the answers to --
24 Q. I --

Page 566

1 A. -- or you want to ask
2 me the same questions.

3 MR. MALOFIY: Let him
4 finish.

5 BY MR. DAVIS:

6 Q. What I want to know is,
7 if you filed an action in --

8 A. You know I didn't.

9 Q. And you didn't do it in
10 2008, did you?

11 MR. MALOFIY: Give him
12 the same answer, just so it
13 can be on the record.

14 BY MR. DAVIS:

15 Q. You didn't do it in
16 2008?

17 A. I just told you, know
18 that I hadn't filed one.

19 Q. And in 2009?

20 MR. MALOFIY: Answer.

21 BY MR. DAVIS:

22 Q. Just answer, and we'll
23 get through it.

24 MR. MALOFIY: No.

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1 Answer your full answer so he
2 gets it.

3 MR. DAVIS: You are
4 directing him what to say now.

5 BY MR. DAVIS:

6 Q. In 2009 --

7 MR. MALOFIY: We are
8 going to take a break. We are
9 done.

10 MR. DAVIS: We are
11 going to finish it. If you
12 give me one minute I can be
13 done.

14 THE WITNESS: I want to
15 take a break at this point.
16 Seriously.

17 BY MR. DAVIS:

18 Q. You want to break,
19 rather than let me finish?

20 A. I want a break.

21 MR. MALOFIY: How many
22 questions do you have.

23 MR. DAVIS: I will be
24 done in a minute if you stop

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1 interrupting me.

2 MR. MALOFIY: The only
3 thing I'm going to say is give
4 him the patients you can. I
5 know you are tired.

6 THE WITNESS: I'm
7 sorry. I'm getting like --

8 MR. MALOFIY: I know
9 you are exhausted.

10 THE WITNESS: I'm
11 exhausted. I'm getting
12 cranky.

13 MR. MALOFIY: Can you
14 listen to me, man, for a
15 second? I know you are
16 exhausted. Let's try to wrap
17 this up. He has a couple more
18 questions he said. I know it
19 is the same question he asked
20 a hundred times.

21 MR. DAVIS: This is --
22 come on, Francis, enough of
23 this.

24 MR. MALOFIY: It is the

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1 same question.

2 MR. DAVIS: If you let
3 me finish, we will be done.

4 MR. MALOFIY: I could
5 have done this deposition in
6 two hours.

7 MR. DAVIS: What was
8 the last question I asked,
9 before we were interrupted
10 again?

11 - - -

12 (At this time the court
13 reporter read back from the
14 record as was requested.)

15 - - -

16 BY MR. DAVIS:

17 Q. In 2009 you didn't
18 bring a lawsuit against any of the
19 defendants in this action?

20 A. I didn't bring a
21 lawsuit in 2009, because I didn't know
22 the song was being stolen from me, had
23 I known I would have pursued suit.

24 Q. You knew that the album

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1 Confessions was being sold in 2009?

2 A. I knew that the song
3 was being sold in 2009. Had I known
4 that the song was being stolen from me
5 from your defendants I would have not
6 allowed any of this to happen.

7 Q. And in 2010 you didn't
8 bring a lawsuit; is that correct?

9 A. In 2010 if I had known
10 I would -- that I was getting rooked
11 and the song was being stolen from me
12 from your defendants, and that I was
13 not properly credited as a song
14 writer, producer, engineer I would
15 have filed a lawsuit.

16 Q. In 2009 you knew that
17 Barton and Guice had received monies
18 on the exploitation of Club Girl, Bad
19 Girl when you cleaned out the studio,
20 didn't you?

21 MR. MALOFIY: He is
22 obviously tired.

23 THE WITNESS: Yes.

24 BY MR. DAVIS:

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1 Q. All right. And in
2 2000 --

3 A. But I want to make it
4 clear, I am tired, and you started
5 from 2000 something and you keep going
6 up, and I'm giving you the same answer
7 because you are being redundant. So
8 now is this a trick thing you are
9 trying to do with 2010? I don't --

10 Q. You know you can't get
11 away with that, Mr. Marino.

12 A. Get away with what?
13 Get away with what?

14 Q. In 2010 did you
15 commence a lawsuit against any of
16 those defendants?

17 A. In 2010, I did not.

18 Q. And in 2011 it was not
19 until October of that year that you
20 commenced an action against these
21 defendants?

22 A. I think you know the
23 answer.

24 Q. Is that correct?

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1 A. I think you know the
2 answer.

3 Q. Is that correct?

4 A. Of course it is
5 correct.

6 Q. And in all those years
7 from 2004 to 2011 you knew that
8 Confessions was being sold?

9 MR. MALOFIY:

10 Objection.

11 BY MR. DAVIS:

12 Q. Is that correct?

13 MR. MALOFIY:

14 Objection. Asked and
15 answered. Answer it fully for
16 this gentleman who is
17 confused.

18 BY MR. DAVIS:

19 Q. I'm asking if you knew
20 it was sold?

21 A. If I knew that the song
22 was being stolen from me I would not
23 have allowed this to go that far. I
24 had no idea that this was happening.

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1 Q. Even after you
2 discovered the statements at your
3 studio when you found them when you
4 were cleaning them out?

5 MR. MALOFIY: He
6 already testified he was
7 depressed.

8 THE WITNESS: It says
9 that in my testimony earlier.

10 MR. MALOFIY: He
11 testified --

12 THE WITNESS: I'm not
13 answering the same question
14 again.

15 MR. MALOFIY: You are
16 asking the same question over
17 and over again. You are not
18 getting --

19 MR. DAVIS: Nobody is
20 getting. You are talking over
21 everybody.

22 MR. MALOFIY: Okay.

23 The man is tired. He is
24 exhausted. You are asking him

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1 the same silly questions over
2 and over and over again. All
3 right. He said he didn't file
4 because he was depressed,
5 state of depression.

6 MR. DAVIS: Are you
7 testifying now?

8 MR. MALOFIY: No, but
9 when you are sitting here
10 badgering this man after
11 eight, nine hours. We have
12 been here since 11:00. It is
13 9:00 now. It is getting too
14 much.

15 MR. DAVIS: Mr.
16 Malofiy, the deposition was
17 noticed for 9:30. You didn't
18 bother to show up until after
19 11:00.

20 MR. MALOFIY: There is
21 reason for that, because of
22 your failures. Your failures.

23 MR. DAVIS: Our
24 failures. Our notice said to

Page 576

1 when and if you asked
2 questions about those Pro
3 Tools files he would be able
4 to be responsive to those
5 questions and so we wouldn't
6 have to continue his
7 deposition to another day.

8 MR. DAVIS: Are you
9 waiving the attorney-client
10 privilege?

11 MR. MALOFIY: No, that
12 is what I'm telling you.

13 MR. DAVIS: I think you
14 are waiving the
15 attorney-client privilege.

16 MR. MALOFIY: Is that
17 what you think? I'm telling
18 you why we were late.

19 MR. ROGERS: It would
20 have been courteous if you
21 were going to review those
22 files that you let us know so
23 we didn't sit around waiting
24 for you.

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1 be here at 9:30.

2 MR. MALOFIY: Yeah,
3 your failures.

4 MR. DAVIS: Okay. Let
5 me just look through my notes
6 and I think we might be done.

7 MR. MALOFIY: I'll just
8 state it on the record unless
9 you want to ask him why we
10 were late and he'll explain it
11 to you. You want me to state
12 it on the record why.

13 MR. DAVIS: I'm only
14 responding to your question
15 about why we are here.

16 MR. MALOFIY: You
17 provided me the Pro Tools
18 files a week late, and I got
19 them yesterday in my office.
20 They were in a format from
21 years ago and my client needed
22 to review those before his
23 deposition here today to be
24 prepared for the deposition so

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1 MR. MALOFIY: I called
2 you --- I e-mail you guys.

3 MR. ROGERS: I never
4 got an e-mail.

5 MR. MALOFIY: Well, I
6 don't know why, but I
7 definitely did, and it was
8 before 10 o'clock, which is
9 the time we said we would be
10 here.

11 MR. ROGERS: None of us
12 got an e-mail.

13 MR. MALOFIY: I don't
14 know why, and I'll have to
15 check that. Okay.

16 MR. DAVIS: Okay. Mr.
17 Marino, I have no further
18 questions for you.

19 MR. ROGERS: No further
20 questions.

21 VIDEOGRAPHER: Okay.
22 The time is now 8:38 p.m.
23 This concludes DVD number four
24 and the deposition of Daniel

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1 Marino.

2 - - -

3 (Whereupon, the
4 deposition concluded at
5 approximately 8:38 p.m.)

6 - - -

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1 LAWYER'S NOTES

2 PAGE LINE

3	_____	_____
4	_____	_____
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24	_____	_____

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1 CERTIFICATION

2
3 I, Kathleen Ruccolo,
4 Professional Reporter and Notary
5 Public, do hereby certify that the
6 foregoing is a true and accurate
7 transcript of the stenographic
8 notes taken by me in the
9 aforementioned matter.

10 - - -

11
12
13
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15
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19
20
21
22
23 DATE: _____
24 KATHLEEN RUCCOLO

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1 INSTRUCTIONS TO WITNESS

2
3
4 Please read your deposition
5 over carefully and make any necessary
6 corrections. You should state the
7 reason in the appropriate space on the
8 errata sheet for any corrections that
9 are made.

10 After doing so, please sign the
11 errata sheet and date it.

12 You are signing same subject to
13 the changes you have noted on the
14 errata sheet, which will be attached
15 to your deposition.

16 It is imperative that you
17 return the original errata sheet to
18 the deposing attorney within thirty
19 (30) days of receipt of the deposition
20 transcript by you. If you fail to do
21 so, the deposition transcript may be
22 deemed to be accurate and may be used
23 in court.
24

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1
2 ---
3 ERRATA SHEET
4 ---

5 PAGE LINE CHANGE

6 _____
7 _____
8 _____
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24 _____

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1
2 ACKNOWLEDGMENT OF DEPONENT

3 I, _____, do
4 hereby certify that I have read the
5 foregoing pages, and that the same is
6 a correct transcription of the answers
7 given by me to the questions therein
8 propounded, except for the corrections
9 or changes in form or substance, if
10 any, noted in the attached errata
11 sheet.
12
13
14

15 _____
16 DATE SIGNATURE

17
18 Subscribed and sworn to before me.
19 My commission expires: _____
20
21
22
23

24 _____
Notary Public

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